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on Civil and
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21 March 1990

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Thirty-eighth session

SUMMARY RECORD OF 951st MEETING

Held at Headquarters, New York,
on Monday, 19 March 1990, at 10 a.m.

Chairman: Mr. LALLAH

CONTENTS

Opening of the session

Adoption of the agenda

Organizational and other matters

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The meeting was called to order at 10.50 a.m.

OPENING OF THE SESSION

1. The CHAIRMAN declared open the thirty-eighth session of the Human Rights Committee.

ADOPTION OF THE AGENDA (CCPR/C/65)

2. The provisional agenda contained in document CCPR/C/65 was adopted.

ORGANIZATIONAL AND OTHER MATTERS

3. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt the proposed programme of work for the session.

4. It was so decided.

5. Mrs. HIGGINS, speaking as the Chairman of the Working Group on Communications, said that the Group had held six meetings the previous week and had made very good progress. It had completed work on a decision on rule 91 and six decisions declaring communications admissible, and had adopted recommendations to find five communications inadmissible. Consideration had also been given to final views concerning an additional five communications.

6. The Working Group felt that it would need more time to deal with two very important draft views which should be completed at the current session. A further draft recommendation on admissibility and two final draft views also had to be considered. Moreover, the Working Group had to discuss how to proceed after the adoption of final views in order to monitor compliance with them. The Committee would be able to consider a paper by the Working Group on that question in due course.

7. Mr. NDIAYE, speaking as the Chairman of the Working Group under article 40 of the Covenant, said that the Group had met the previous week and had considered draft general comments on article 23 on the basis of a paper originally drawn up by Mr. El-Shafei and subsequently amended to take into account all the observations made by the previous members of the Working Group. That text would be a useful basis for future work. The Working Group had also prepared lists of issues to be taken up in connection with the consideration of the reports submitted by Costa Rica, the Dominican Republic, the Federal Republic of Germany and Nicaragua.

Consideration of the lists of issues to be taken up in connection with the consideration of reports submitted by States parties under article 40 of the Covenant

Third periodic report of the Federal Republic of Germany (CCPR/C/52/Add.3)

8. The CHAIRMAN invited the members of the Committee to consider the list of issues relating to the third periodic report of the Federal Republic of Germany.

9. Mr. PRADO VALLEJO, referring to section IV (a), said that the word "noticeable" did not seem appropriate in that context.

10. The CHAIRMAN suggested that the word "noticeable" should be deleted.

11. It was so decided.

12. Mrs. HIGGINS said that the Committee should raise the question of the resurgence of racism, particularly anti-Semitism, in connection with section VI. Referring to section VII, she said that there should be a general reference to the current momentous events taking place in the process of German reunification and to the status of the Covenant in that context.

13. Mr. NDIAYE said that, while the points raised by Mrs. Higgins were important, the Working Group under article 40 of the Covenant had felt that individual Committee members could ask specific questions addressing those issues.

14. Mr. MAVROMMATIS said that events in Europe were moving very fast and that it would be preferable for individual members of the Committee to ask questions about them.

15. Ms. CHANET agreed with Mr. Mavrommatis. It would be unwise for the Committee to enter into a discussion of a political process on which it could not take a position. If individual members of the Committee wished to raise specific questions in that regard, they could do so.

16. The CHAIRMAN said that, for a number of reasons, it would be better to let individual members of the Committee raise such questions instead of adding them to the list of issues.

17. The list of issues to be taken up during the consideration of the third periodic report of the Federal Republic of Germany, as amended, was adopted.

Second periodic report of Costa Rica (CCPR/C/37/Add.10)

18. The CHAIRMAN invited the members of the Committee to consider the list of issues relating to the second periodic report of Costa Rica.

19. Mr. AGUILAR URBINA suggested that, under section V (a), it might be appropriate to ask why Costa Rica had not yet ratified the Convention against Torture.

20. The CHAIRMAN said that that question could be raised by a member of the Committee.

21. Mr. NDIAYE said that reports submitted under article 40 of the Covenant did not deal with other human rights instruments. The question was therefore irrelevant.

22. The CHAIRMAN suggested that section V (a) should be adopted as it stood.

23. It was so decided.

24. The list of issues to be taken up during the consideration of the second periodic report of Costa Rica was adopted.

Second periodic report of the Dominican Republic (CCPR/C/32/Add.16)

25. The CHAIRMAN invited the members of the Committee to consider the list of issues relating to the second periodic report of the Dominican Republic.

26. The list of issues to be taken up during the consideration of the second periodic report of the Dominican Republic was adopted.

Second periodic report of Nicaragua (CCPR/C/42/Add.8)

27. The CHAIRMAN invited the members of the Committee to consider the list of issues relating to the second periodic report of Nicaragua.

28. Mr. PRADO VALLEJO said there was a difficulty with the Spanish wording of section IV (f). The word "confinado" meant exiled or deported and could not therefore be equated with "detained" in the English version. He suggested that the Spanish version should be amended by replacing "confinado" with "detenido".

29. The amendment to section IV (f) proposed by Mr. Prado Vallejo was adopted.

30. The list of issues to be taken up during the consideration of the second periodic report of Nicaragua was adopted.

31. The CHAIRMAN noted that in the French and Spanish versions of the lists of issues relating to the reports submitted by Costa Rica and Nicaragua the heading of section XIII would be amended to bring it into line with the English version.

The meeting rose at 11.40 p.m.

READEX FICHE

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ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Thirty-eighth session

SUMMARY RECORD OF THE 952nd MEETING

Held at Headquarters, New York,
on Monday, 19 March 1990, at 3 p.m.

Chairman: Mr. LALLAH

later: Mr. DIMITRIJEVIĆ (Vice-Chairman)

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Initial report of Argentina (CCPR/C/45/Add.2)

1. At the invitation of the Chairman, Mrs. Regazzoli (Argentina) took a place at the Committee table.

2. Mrs. REGAZZOLI (Argentina), introducting the initial report of Argentina, said that the constitutional Government, under President Carlos Saul Menem, was committed to promoting and protecting human rights and had established machinery for that purpose (para. 20 of the report). In November 1989, in presenting its first report to the Committee against Torture, Argentina had provided detailed information about the functioning of its legal system and had answered questions regarding the incorporation of the norms of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment into Argentine legislation. The final report of the third session of the Committee against Torture contained details which supplemented the information contained in Argentina's initial report (CCPR/C/45/Add.2).

3. Argentina was active in international human rights bodies, including the United Nations Commission on Human Rights. Argentina had given its support to the Convention on the Rights of the Child and the Second Optional Protocol to the International Covenant on Civil and Political Rights. It also supported the work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Argentina played a prominent role in the Organization of American States and co-operated with the Inter-American Commission on Human Rights.

4. The economic crisis in Argentina made it difficult to protect and promote economic, social and cultural rights. It was clear that, in Argentina, the full implementation of the Declaration on the Right to Development was still remote, since there were other, much more urgent needs to be dealt with. In their consideration of Argentina's compliance with the International Covenant on Civil and Political Rights, the experts should bear in mind the prevailing social and economic situation in the country.

5. She wished to update paragraph 9 of the initial report by informing the Committee that Argentina and the United Kingdom had recently re-established diplomatic relations. Additional information on that subject was contained in the joint Argentine-British declarations which had been circulated as official United Nations documents under the symbols A/44/678 and A/45/136. She also wished to provide the Committee with additional information regarding paragraphs 64 to 78 of the report. When a state of siege had been declared in Argentina in May 1989, her country had made the communication referred to in article 4 (3) of the Covenant. When the domestic situation had permitted the lifting of that exceptional measure, Argentina had also informed the United Nations and had provided details regarding the rights which had been temporarily suspended during the state of siege.

(Mrs. Regazzoli, Argentina)

6. Argentina was aware of the work which the United Nations and the Human Rights Committee had been carrying out to protect and promote human freedoms. The Charter of the United Nations had been elevated to the status of a basic universal legal document. Argentina recognized that the Human Rights Committee not only considered reports submitted by States but also had the competence, under article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights, to receive individual communications, containing complaints of human rights violations.

7. Between 1984 and 1986, the two International Covenants on Human Rights and the American Convention on Human Rights had been incorporated into Argentine law. Although treaties did not take precedence over the Constitution and were hierarchically inferior to it ("infra-constitutional"), the State was obliged to comply with them fully not only on the strength of article 31 of the Constitution but also under the Vienna Convention on the Law of Treaties, to which Argentina was a party. In the case of Argentina, the philosophy of those three treaties was perfectly compatible with the rights and guarantees provided under the Constitution, and their inclusion in the Argentine legal system had not been out of keeping with the Constitution.

8. Since 1983, Argentina had become part of the global and regional system for the protection of human rights and had ratified the relevant international human rights instruments, which had become part of Argentina's internal law and were self-executing. The International Covenant on Civil and Political Rights could be invoked by Argentine citizens both before the administrative authorities and before jurisdictional bodies. It could, of course, be invoked before the international implementing body, the Human Rights Committee. From the legal point of view, all steps had been taken in order to make the protection of human rights a reality in Argentina.

9. Mr. AGUILAR URBINA said that, according to the initial report of Argentina (CCPR/C/45/Add.2), the rights guaranteed under the Covenant were already protected under the Argentine Constitution. In the light of the fact that Argentina had just emerged from a period during which its Constitution had been virtually a dead letter, that statement gave rise to concern. The Constitution had not been applied with respect to the rights and freedoms it contained. For example, paragraph 3 (a) (viii) of the report made reference to the freedom of religion. However, there had been reports of the persecution of Jews in Argentina. Paragraph 3 (c) referred to a number of rights, many of which had been constantly violated during the period of the dictatorship.

10. Paragraph 3 (d) stated that the Constitution established political rights "in implicit form", and he wished to know exactly what that meant. Could that non-enumeration of political rights be interpreted as indicating that the Constitution did not provide such rights, or that the Government might be able to deny them? According to paragraph 6 of the report, article 33 of the Constitution provided that the declarations, rights and guarantees listed in the Constitution should not be taken as a denial of other rights and guarantees not listed therein. He requested Argentina to provide some examples of such non-enumerated rights and guarantees.

(Mr. Aguilar Urbina)

11. He would appreciate further explanation regarding the state of siege. In paragraph 7 (a) (i) of the report, it was stated that the state of siege could be established before the facts had occurred, although the mere possibility of internal disturbances could not justify that. However, article 23 of the Constitution did not appear to say the same thing about internal disorder: it did not explicitly provide that the Argentine State could declare a state of siege in the event of the probability of disorder. He also wished to know what was the maximum duration of a state of siege since, during the military dictatorship, it had gone on for years. Although the Argentine Congress had the power to declare a state of siege, throughout Argentine history it had generally been the executive power which had declared a state of siege. He wished to know what guarantees had been given to the Argentine people to assure them that their rights would not be suspended or violated. He requested information about what was being done to make members of the armed forces aware of the rights provided under the Constitution and the international human rights instruments. He also wished to know whether all the rights set forth in the Constitution and in the international human rights instruments could be suspended.

12. Finally, with regard to the implementation of the Covenant, as referred to in paragraphs 10 and 11 of the report, he wished to know whether the international human rights instruments had the same hierarchical status as a legislative enactment, and whether it was truly the Argentine Congress which ratified treaties, rather than the executive power. In the case of a conflict between the law and a treaty, he wished to know whether the treaty took precedence and the law was declared invalid, and also what the procedure was for eliminating a law which conflicted with a treaty, in particular a human rights treaty.

13. Mr. PRADO VALLEJO noted that while there were essentially no discrepancies between Argentine legislation and the International Covenants on Human Rights, the report was incomplete in places. It would be useful to know how the Punto Final and Due Obedience legislation had been harmonized with article 2 of the Covenant, specifically with regard to the investigation of human rights violations, the compensation of victims, and the pardons and amnesties granted concerning disappearances under former dictatorships. Those rights which could be suspended under a state of emergency should be specified, since article 4 of the Covenant prohibited the suspension of certain rights under any circumstances. The Committee remained concerned over the results of investigations into disappearances which had occurred before Argentina became a party to the Covenant. Information would be appreciated on government measures taken in reaction to police abuse and to the attack on the La Tablada barracks in January 1989, which the report did not mention.

14. The reporting State should indicate whether it planned to change the requirement of being in communion with the Roman Catholic Apostolic Church in order to seek the office of President or Vice-President (para. 245), which it had acknowledged to be contrary to article 25 of the Covenant. Similarly, in paragraph 246, the minimum income of 2,000 strong pesos required in order to run for senator appeared to be at variance with the principles contained in the Covenant, even if, in reality, it was not stringent.

15. Ms. CHANET inquired about the relative status of the national Constitution, the provincial constitutions, the national laws and international treaties, and particularly, which norms prevailed in the event of a conflict. Examples should be given of cases in which the Covenant could be directly invoked. She also wondered whether the Under-Secretariat of Human Rights was empowered to take direct action in dealing with violations, or if cases had to be referred to the courts. In that connection, the relationship between administrative and judicial remedies should be further clarified. Additional information was also necessary concerning the remedies referred to in paragraph 21, including whether they pertained to violations of fundamental human rights. The distinction between legal and judicial cases should be explained.

16. As Mr. Aguilar and Mr. Prado Vallejo had indicated, the reporting State should indicate any explicit - as opposed to implicit - guarantees of the minimum humanitarian standard referred to in paragraph 75. It would be useful to know about any legal or judicial checks on the powers accorded to the President in a state of siege. In view of the profound reform which the Argentine court system had undergone in the past five years it would be interesting to have additional details on the organization of the civil and military court systems, and on the status of judges. More specific information should be provided on the role of the special commissions described in paragraph 115. She would appreciate details on the procedure under which military personnel were tried for ordinary offences in the Federal Appeal Chamber (para. 46), and the number of cases which had been transferred to the civilian court. She wondered if remedies were currently available to victims of offences committed by the military for which amnesty had been granted, and whether such amnesty was consistent with article 9 (5) and article 2 (3) of the Covenant. Information would also be welcome on measures taken to ensure respect for the right to life and safety of the human person and the elimination of torture and cruel, inhuman and degrading treatment. Amnesty and laws which readmitted military personnel guilty of committing human rights violations into the Government gave cause for concern, since such laws would ultimately spare those persons from prosecution.

17. She wondered whether trial procedures which excluded participation by the public and press (para. 150) were compatible with article 14 of the Covenant and would appreciate a report on the status of the bill to institute verbal and public proceedings in the national courts (para. 152). It was not clear why Argentina had not entered a reservation under article 14 at the time it had ratified the Covenant. Along with other Committee members, she questioned the requirement concerning religion for presidential candidates. Lastly, referring to paragraph 212, she requested clarification on the designation of the Catholic Church as a public legal person, and the advantages and disadvantages of such legal status. She wondered whether according that status to the Catholic Church was consistent with articles 18 and 26 of the Covenant.

18. Mr. Dimitrijević, Vice-Chairman, took the Chair.

19. Mr. FODOR inquired about the use of the term "inhabitants" in paragraphs 3 (b), 3 (c) and 22, which was broader than the term "nationals" but narrower than the language used in the Covenant. Article 20 of the Constitution, setting forth the rights of foreigners (para. 139 of the report), was not as comprehensive as the Covenant.

20. It was not clear from paragraph 5 whether courts other than the Supreme Court were competent to decide on matters of constitutionality. In paragraph 7 (b) (ii) and (iii), it was not sufficiently clear when a state of siege was to be declared by the President, and when it was to be declared by the Federal Government. The reporting State indicated, in paragraph 9, that it could not provide information on the implementation of the Covenant throughout its territory, owing to a dispute over the Malvinas Islands. However, it did not specify whether that dispute also extended to South Georgia and the South Sandwich Islands.

21. It would be useful to know whether the competence of the military tribunals was determined on the basis of ratione materiae, ratione personae, or a combination of the two. Clarification was required on the use of "essentially" in "essentially military cases" (para. 46) under the 1984 amendment to the Code of Military Justice. He wondered whether Argentina would continue to deem separate military and military criminal courts a necessity, in view of the fact that other democracies were abandoning that practice. It was difficult to understand why appeals on administrative cases were to be lodged with the same body which had ruled in the first instance (para. 18), since, realistically, those bodies could not be expected to acknowledge their own errors. It would be useful to know whether the authority of administrative decisions could be challenged before the courts and, if so, in which instances. The Under-Secretariat of Human Rights and the Under-Secretariat of Human Rights in the International Field would be even more effective if those bodies were not subordinate to the Ministry of the Interior, and the Ministry for Foreign Affairs and Religion, respectively. It was also difficult to understand why intermediaries were necessary in order to bring complaints before the judicial and administrative authorities, when the victims of human rights violations could appeal to those authorities directly.

22. Referring to paragraph 26 (b) (iii) (a), he requested clarification on the use of the habeas corpus procedure to demonstrate the illegality of the declaration of a state of siege in a concrete case only. As it was doubtful that a state of siege could be considered legal in a general sense and illegal in a particular case, it would be useful if the reporting State provided information on judicial practice in that regard, citing case law, where possible. It would be preferable if the Constitution specified the "minimum core of rights" considered inviolable during a state of siege (para. 75), rather than leaving such guarantees to interpretation. He asked about the recently adopted measure authorizing a greater role by the armed forces during a state of siege, and how that measure would affect the implementation of the Covenant.

23. He wondered why the punishment for murder when in a state of violent emotion was less severe than the punishment for murdering a child in order to conceal the dishonour of a daughter, sister, wife or mother (para. 87). Reduction of the

(Mr. Fodor)

penalty for abandoning a baby when it was to save a wife, mother, daughter or sister from dishonour, seemed to be rooted in archaic principles. He wondered why "sister" had been omitted from the list of individuals to whom particular respect was due in paragraph 119 (2) on depriving another person of liberty. Indeed, the very concept of individuals to whom particular respect was due seemed discriminatory on positive grounds. Referring to paragraph 120, he said that it was not clear why women required greater protection with regard to concealing a person in order to oblige the victim or a third person to act or tolerate something against his or her will.

24. Article 255 of the Code of Penal Procedure, whereby a defendant was informed of the reason for proceedings and imprisonment only after making a statement before the judge (paras. 128 and 154), seemed inconsistent with article 9 of the Covenant, which guaranteed that the accused would be promptly informed of the reasons for his arrest and the charges against him. The reporting State should provide additional information on its legal provisions and court practice concerning compensation for unlawful arrest or detention, dealt with in article 9 (5) of the Covenant. As, under Argentine law, the burden of requesting compensation for judicial error seemed to fall on the victim (para. 165), information on court jurisdiction in that area would be appreciated.

25. With respect to article 17 of the Covenant on the right to privacy, the reporting State should specify the circumstances under which telegraph and telephone tapping were legally permitted and the authorities from whom such permission must be sought. It would also be useful to know how journalists were guaranteed access to information in practice, and the extent to which officials were legally bound to provide information to the press. Referring to paragraph 203, he noted that Argentine law did not comply with article 20 (1) of the Covenant, in that article 219 of the Argentine Penal Code did not precisely deal with propaganda for war.

26. It would be interesting to know whether there were instances in which the authorities could deny the right of assembly under the procedure described in paragraph 208, and whether such denial could be appealed. He would appreciate information on how Argentina guaranteed freedom of association (article 22 of the Covenant) in practice, including details on the prerequisites for forming associations and political parties. Lastly, the reporting State should clarify the meaning of "corporal punishment" for failure to carry out duties of family assistance (para. 209), which appeared to be incompatible with article 7 of the Covenant.

27. Mr. Lallah resumed the Chair.

28. Mr. COORAY congratulated the Argentine representative on her statement, which showed how seriously the democratic and legal Government of her country took the rights embodied in the Covenant. That seriousness had also been demonstrated by Argentina's ratification within the past five years of a number of other human rights instruments.

(Mr. Cooray)

29. Turning to Argentina's initial report, he said it would be useful to have more information on a number of the points it dealt with. In connection with paragraph 26 (b) (iv), he asked whether there had been any specific cases in which alleged violation of rights by the authorities had been declared unconstitutional. More generally, he felt that it would be useful to have more information on what action had been taken to raise public awareness of the provisions of the Covenant, particularly in the police forces and among original inhabitants and aborigines and how conformity with the provisions of the Covenant on the part of the police was ensured.

30. It was his understanding that Act 23.049 of 13 February 1984 (para. 46) provided that subordinate military officers could not claim exemption from punishment for offences on the basis of the principle of due obedience. He asked if that was correct and, more generally, what the effect of the Law of "Due Obedience" of June 1987 had been on Act 23.049. Had the provisions of that law, of the law of "Punto Final" and the presidential pardons of October 1989 for officers accused of human rights violations been considered by the courts in relation to their compatibility with the Covenant?

31. In connection with paragraph 7, he asked whether there had been any explicit legal provision or rulings that there could be no derogation from the basic rights laid down in the Covenant, even during a state of siege; what control was exercised by the legislature over the duration of the state of siege; and whether habeas corpus remained applicable during such a state.

32. Referring to paragraph 84, he asked whether the compatibility of article 70 of the Civil Code with the American Convention on Human Rights had been considered, and whether it would be correct to assume from the provisions cited in paragraph 92 that a pharmacist who gave a woman an abortion pill just after conception would be liable to two to four years of imprisonment.

33. He would welcome specific information on how many investigations into alleged violations of human rights had been completed, what the results had been and what was the present position with regard to investigations not yet completed.

34. Clarification of the compatibility of the law concerning due obedience with article 7 of the Covenant would be helpful. In connection with paragraph 154 (d), he asked whether the right to seek legal assistance could be denied to a defendant during the preliminary and investigatory stages of proceedings. In connection with paragraph 194, he asked how de facto Law No. 21.745 could be said to be compatible with article 18 (1) of the Covenant.

35. More information on the aboriginal communities referred to in paragraph 236 would be welcome, including information regarding the size of those communities. He wished to know also whether Act 23.302 ensured the right of the creoles and other indigenous groups to practice their own religion and use their own languages.

36. Mrs. HIGGINS expressed appreciation of the very informative report of Argentina, while noting the lack of adequate information on some events and certain problems relating to human rights. Argentine law regarding the declaration of a state of siege seemed less stringent than article 4 of the Covenant. More information on the single state of siege declared since the return of civilian rule would be helpful; for example, if the decision to enact it had been taken by the President rather than the legislature, how could it be regarded as constitutional? She shared the concern expressed by a number of Committee members regarding the rights established as non-derogable rights under article 4 of the Covenant, and asked whether any inquiries had been made with regard to the allegations concerning maltreatment made by the Argentine Permanent Assembly for Human Rights. In the case of Decree No. 392/90, she noted that the definition of "internal commotion" seemed rather broad and asked why it had been considered necessary to involve the army in matters of internal security. She shared the concerns expressed by other members of the Committee with regard to the "Punto Final" and "Due Obedience" laws and the presidential pardons of October 1989 and their compatibility with article 2 of the Covenant.

37. She had been impressed by the rapidity with which those responsible for the La Tablada attack in January 1989 had been tried and punished, but wondered why the judicial process had been so slow in the case of those involved in alleged violations of human rights from March 1989 onward. In connection with the section of the report dealing with article 14 of the Covenant, she asked for more information on why the Attorney-General had issued instructions to the prosecutors not to challenge the constitutionality of the presidential pardons.

38. She continued to be concerned at the situation of kidnapped and abducted children, and would like more information on the subject. In particular, she asked whether the data bank on such children was to be maintained.

39. Lastly, with reference to article 9 of the Covenant, she would like to learn more about the recent Supreme Court decision concerning harbeas corpus and how it affected the rights laid down in article 9.

40. Mr. EL SHAFEI welcomed the submission of Argentina's initial report and noted that the accession of a democratic and civilian government after years of military dictatorship encouraged members of the Committee to ask for more information on certain areas covered by the report. In general, he would like to know what significant changes relating to implementation of the Covenant had been introduced since the accession to power of a civilian government, what difficulties relating to the implementation of the Covenant had arisen and what efforts had been made to disseminate information on the rights ensured under the Covenant. It would be of interest also to have more clarification concerning the real status of the Covenant within the juridical and constitutional system of Argentina; he wondered, for example, whether legal remedy for violations of human rights could be sought under the Covenant and whether any legal decisions had been based directly on the Covenant; he would also appreciate more information on what steps had been taken to strengthen the independence of the judiciary.

(Mr. El Shafei)

41. It seemed to him that not all the rights guaranteed under article 4 of the Covenant had been adequately provided for in Argentina's constitutional provisions relating to the state of siege. The question of the large number of cases of enforced or involuntary disappearance in Argentina also continued to be of concern. In that connection, he wondered whether the Presidential pardons of October 1989 were considered to have disposed of the matter.

42. Mr. ANDO, while welcoming Argentina's return to civilian government, noted that even under the most difficult political and social circumstances there was an obligation to protect human rights. He asked whether under Argentine law the courts could apply the provisions of the Covenant directly in specific cases. It would be interesting to know what specific plans there were to have the Under-Secretariat of Human Rights in the International Field participate in the formulation of international human rights instruments (para. 30 (d) of the report), and to have specific examples of instances in which foreigners had actually voted and been elected in the municipalities in which they lived (para. 43 of the report).

43. Regarding military justice, under which the death penalty was still in effect, he wondered what had become of any civilians sentenced to death by military courts during the period of military rule, and if any remedies were now available in the matter. He joined other members of the Committee in expressing concern over the 1989 presidential pardons for military personnel convicted of crimes under the new régime and over the problems relating to the state of siege.

44. Regarding the anti-discrimination legislation in Argentina, he wondered why the legislation referred to in paragraph 49 of the report dealt with the possible grounds for discrimination without offering political guarantees, as in the relevant article of the Covenant. It would be interesting to know if the Under-Secretariat for Women (para. 63 of the report) had received any complaints about discrimination and, if so, what the main issues had been.

45. Article 14 of the Covenant provided that defendants must be given a public hearing, and he would like clarification on what constituted a public hearing in the Argentine system.

46. Concerning freedom of religion under article 18 of the Covenant, he wondered whether the Roman Catholic religion, already so prominent under Argentine law, enjoyed any financial privileges over other religions. As to the requirement that non-Catholic religions must apply for recognition and inscription (paras. 194 ff. of the report), clarification of the difference between the two procedures would be useful. In relation to article 19 of the Covenant, if Argentine journalists did not register as required (para. 201 of the report), were there any limitations imposed on their activities? Lastly, it would be interesting to learn how the Government was planning to deal with the discrepancies it had acknowledged (paras. 245 ff. of the report) between the Covenant and its domestic legislation.

47. Mr. MYULLERSON, welcoming the new laws adopted in Argentina in defence of individual rights, said that more information was needed on how that legislation had in practice been applied. Some of the recent laws - particularly the Law of Due Obedience setting time-limits on appeals and the Law of Punto Final - seemed to raise obstacles to the implementation of article 2 (3) of the Covenant. More information was needed on what had led the Government to adopt those laws and how it justified them. Certainly, military justice would not relieve a subordinate of responsibility for carrying out the illegal orders of a superior. Also, the establishment of a religious requirement for election to the highest offices in Argentina (para. 191 of the report) seemed to run counter to both article 106 of the Argentine Constitution and article 2 (1) of the Covenant; and it would be interesting to know how the Argentine public viewed that provision.

48. He requested clarification of the corporal punishment referred to in paragraph 219 of the report, and any relation it might have to torture or treatment that was an affront to human dignity. In reference to article 7 of the Covenant, he wondered if any complaints of torture in connection with the La Tablada attack of January 1989 were currently under consideration by the Government.

49. He asked if there were any laws in Argentina restricting freedom of travel. More information was needed on how the independence of the judiciary was ensured in Argentina - how judges were appointed, how long they served, on what grounds they were dismissed and by whom. Also, the report indicated (para. 154 (c)) that any examining judge must receive a complaint within 24 hours of a prisoner's having been put at his disposal, but it was not clear whether there were any time-limits on the prisoner's appearance before the judge.

50. Mr. WENNERGREN asked whether all treaties ratified by the Argentine Congress (para. 11 of the report) were sent to the President for promulgation and whether the Covenant had, after its ratification, been published in an edition of current laws so that it would be easily available to Argentine authorities.

51. Further details would be useful on the organizational structure of the Under-Secretariat of Human Rights (para. 28 of the report), the nature of its functions, the number and nature of the complaints received and subsequent action taken.

52. Regarding the right to life under article 6 of the Covenant, he would appreciate information on any laws under consideration to curb killings by the police, which were statistically very high in Argentina. Also, was the law that made abortion illegal (para. 94 of the report) often applied? It would be good to have statistics on that question.

53. Regarding freedom of assembly under article 21 of the Covenant, he was troubled by article 22 of the Argentine Constitution, which made it a crime of sedition for any armed force or meeting of persons to assume the rights of the people and petition in their name. In view of recent events in Eastern Europe, it was questionable whether this was really a suitable constitutional provision for a democracy, since it left no room for civil disobedience. With regard to freedom of

(Mr. Wennergren)

conscience, he wondered, in view of the requirement that all Argentine males should bear arms, whether any provision had been made for conscientious objectors. In addition, he saw nothing in the Constitution regarding freedom of expression and opinion per se, and the report too referred, under article 19 of the Covenant, only to freedom of the press.

54. Mr. POCAR observed that while the report gave a clear idea of the welcome developments since the end of the military dictatorship in Argentina, it was less exhaustive on the legal practice in the country.

55. Beyond the questions raised by others regarding the relations between the Covenant and Argentina's Constitution and domestic law, he did not see how Argentina's reservation to article 15 (2) of the Covenant, as explained in paragraph 176 of the report, could be justified, since what was at issue was an imperative rule of international law. However since the Constitution did not provide for automatic implementation of customary international law, it was indeed necessary for Argentina to adopt a specific law on the matter.

56. He would like clarification on the scope of the term "inhabitant" in Argentine law and whether it involved any residency requirements.

57. Regarding amparo (para. 54 ff. of the report), he would like to know if, under the state of siege, the amparo procedure had applied in the same cases as had the habeas corpus procedure described in paragraph 26 (b) (iii) of the report. More information would be welcome on remedies available to victims of violations that had occurred before the democratic Government had been installed. Although the events had taken place before the Covenant had entered into force in Argentina, their effects continued, especially in cases of disappearance. He was concerned that at least one right - that guaranteed in article 9 (5) of the Covenant - had been denied since the entry into force of the Covenant by the passage of the law of Punto Final and the Law of Due Obedience. The limitation on political rights discussed in paragraph 247 of the report also affected the implementation of article 9.

58. The report gave scant attention to article 20 (2) of the Covenant, although it elsewhere spoke of anti-discrimination legislation. Had such legislation had any effect specifically on the anti-Semitism that prevailed in some circles in Argentina?

59. Mr. WAKO said that he too was concerned about the Law of Punto Final and the Law of Due Obedience, the amnesty provisions, and Argentina's reservation on article 15 (2) of the Covenant.

60. The justification in Decree No. 392/90 for the use of military force to quell an internal disturbance did not seem to be in conformity with article 67, paragraph 24 of the Constitution, which authorized the use of force only to suppress insurrection or repel invasion.

(Mr. Wako)

61. He agreed with the observation that the Constitution made little reference to specific rights, although it was true that article 33 stated that rights and guarantees not enumerated but which arose from the principle of the sovereignty of the people and from the republican form of government were covered. He wondered if that applied to all the rights guaranteed in the Covenant.

62. Regarding article 27 of the Covenant, it would be good to have more information on what had been done by the National Institute of Indigenous Affairs (para. 237 of the report) since its establishment in 1985: had, for instance, land been returned to the dispossessed indigenous communities and had they received compensation?

63. Regarding freedom of religion in Argentina, it would be interesting to know how many non-Catholic religions had registered as required by law, and whether, once registered, they were equal under the law with the Roman Catholic Church. On the question of conscientious objectors, the report stated (para. 199) that a religion could request exemption from obligatory military service, but it was not clear whether such exemption applied automatically to individual adherents of that religion.

64. Regarding the right to life and paragraphs 106 and 121 of the report dealing with the provisions of the Penal Code applicable to violations by security forces, he would like further details on how many officers had been found guilty of offences and disciplined for them, what the penalties had been, and whether the deaths of persons participating in peaceful demonstrations were automatically investigated.

The meeting rose at 6.20 p.m.

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Thirty-eighth session

SUMMARY RECORD OF THE 953rd MEETING

Held at Headquarters, New York,
on Tuesday, 20 March 1990, at 10 a.m.

Chairman: Mr. LALLAH

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

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The meeting was called to order at 10.15 a.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of Saint Vincent and the Grenadines (CCPR/C/26/Add.4)

1. The CHAIRMAN pointed out that the initial report of Saint Vincent and the Grenadines, contained in document CCPR/C/26/Add.4, which had been due in 1983, had been submitted in 1989. Despite the brevity of the report, he looked forward to a constructive dialogue with the representative of Saint Vincent and the Grenadines.

2. At the invitation of the Chairman, Mr. Campbell (Saint Vincent and the Grenadines) took a place at the Committee table.

3. Mr. CAMPBELL (Saint Vincent and the Grenadines) said that his country, having only recently joined the United Nations, expected to learn a great deal about compliance with its obligations under the Covenant. In preparing its second periodic report, his delegation would be guided by the examples offered by similar reports, and would provide fuller coverage of the human rights situation in his country.

4. Saint Vincent and the Grenadines, which covered an area of 150 square miles and had 115,000 inhabitants, had close ties with its neighbouring countries in the Caribbean owing to, inter alia, its use of their international airports, a shared Supreme Court system and important similarities in constitutional arrangements, based on a common experience of British influence.

5. St. Vincent had acquired the status of an Associated State of the United Kingdom in 1969. Under the terms of the 1969 Constitution, Saint Vincent had been given complete control over internal affairs, while the United Kingdom had retained responsibility for foreign affairs and defence. His country had gained full constitutional independence in 1979 and it was to the Constitution elaborated at that time that its initial report referred.

6. Despite its small size and population, Saint Vincent and the Grenadines was resolutely determined to respect the rule of law and to protect the fundamental rights of its citizens. All the civil and political rights referred to in the International Covenant on Civil and Political Rights were substantially protected by the 1979 Constitution. Moreover appropriate legal machinery had been established to enforce those rights.

7. Saint Vincent had been a parliamentary democracy since 1951 and currently operated under a multi-party parliamentary system. The Parliament was composed of 15 elected Representatives and 6 appointed representatives, known as Senators, who were entitled to all the rights of parliamentary membership except the right to vote on constitutional amendments. The Parliament was presided over by a Speaker drawn either from the membership of that body or from outside. The current Speaker - an experienced lawyer - was not a member of Parliament. Saint Vincent

(Mr. Campbell, Saint Vincent and the Grenadines)

was governed by a Governor-General, who was appointed by the British Queen and had an unlimited tenure. The Constitution provided for the position of leader of the opposition. However, as a result of the elections in May 1989, all 15 parliamentary posts were currently filled by representatives of the New Democratic Party.

8. Saint Vincent had a full range of legal institutions. It had two kinds of courts. The magistrate's courts, staffed by persons with a minimum of five years of legal experience, were at the lower level. The magistrate's courts handled a range of civil and criminal matters but had limited jurisdiction with regard to the types of cases they could hear and the kinds of penalties they could impose. At the higher level, the High Court of justice was presided over by a judge who had to have seniority in the legal profession. The jurisdiction of the high court judges was unlimited in that they could impose maximum penalties for criminal offences and award maximum damages in civil cases. Saint Vincent also shared a Supreme Court with seven other territories of the eastern Caribbean. Above the Supreme Court was the Court of Appeal, which heard appeals from both the magistrate's court and the High Court. In addition, the Constitution provided for appeals in all cases to the Judicial Committee of the British Privy Council. Therefore, there were no restrictions on access to legal remedies and redress.

9. Judges and magistrates were appointed by an independent Judicial and Legal Commission, consisting of eminent jurists from the eastern Caribbean region. Judges sitting on the Eastern Caribbean Supreme Court were rotated after every few years of service. Judges generally did not administer justice in their home territories.

10. The Constitution of Saint Vincent and the Grenadines had incorporated safeguards against frivolous change. Certain sections of the Constitution which were not deemed vital could be amended by Parliament, but only by a two-thirds majority of the elected members. Many of the very important provisions, particularly those dealing with human rights, the judiciary and appointments to the public service, were "entrenched" provisions: they could only be amended in accordance with the following procedure: the approval of a two-thirds majority of the elected members of Parliament, followed by a cooling-off period of 90 days, followed by a public referendum requiring a two-thirds majority for adoption of the amendment.

11. Each article of the International Covenant on Civil and Political Rights had a counterpart measure in Saint Vincent's Constitution. Detailed information on the relationship of those measures to the articles under the Covenant was provided in the initial report (CCPR/C/26/Add.4). With respect to article 6 of the Covenant, he observed that while the death penalty could still be imposed in his country, it was very rarely invoked in practice. Sections 65-67 of the Constitution contained elaborate provisions dealing with the prerogative of mercy. Certain mandatory procedures had to be carried out before a death penalty could be enforced. Under section 65, provision was made for the Governor-General to grant a pardon to any person serving a prison term. Section 66 set up an Advisory Committee on the

(Mr. Campbell, Saint Vincent
and the Grenadines)

Prerogative of Mercy and directed it to make a recommendation for or against mercy in every case involving a death sentence. While the Advisory Committee's recommendations were not binding, they would be rejected only in extreme circumstances.

12. The only discrepancy between the International Covenant and Saint Vincent's municipal law was that between article 6 (5) of the Covenant, which stated that a "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women" and the Criminal Code, which provided the same protection to pregnant women but fixed the age of 16 as the maximum age for exoneration from the death penalty. His Government had recently been invited by the Saint Vincent and the Grendines Human Rights Association to consider amending the Code to bring it into conformity with the International Covenant.

13. Article 13 of the Covenant was also covered under the Fugitive Offenders Act No. 50 of 1989, which was a compilation of all prior legislation on such offenders. The Act, which was based on current legal practice among States, stipulated the offences for which a person might be returned to another jurisdiction. In keeping with international practice, persons accused of essentially political offences could not be extradited. Article 23 of the Covenant was further covered by the Matrimonial Causes Act of 1989. Article 24 of the Covenant was reflected in the Status of Children Act of 1980, which abolished the distinction between children born in and out of wedlock, and the Law of Minors Act No. 49 of 1989, which enshrined the rights of the child and set forth general principles for the treatment of children. The Law of Minors Act also guaranteed full equality of mothers and fathers in claims involving minors.

14. The Human Rights Association in his country played a very active role with regard to national issues. Much had been done to enhance the status of women in Saint Vincent and the Grenadines. Women now enjoyed full equality with men in all respects. Legislation passed in 1989 to eliminate any remaining discrimination against women included Domicile Act No. 35, under which married women could freely choose their domicile; the Maintenance Orders Reciprocal Enforcement Act, which provided for the enforcement of maintenance orders issued in Saint Vincent and the Grenadines and other jurisdictions; the Maintenance Act, which conferred equal status on women in claims for maintenance from men by whom they had children; and the Matrimonial Causes Act, which dealt with the breakdown of marriages and was modelled on British legislation. Lastly, under a constitutional amendment passed in 1988, foreign spouses of both male and female citizens automatically had the right to be registered as citizens of Saint Vincent and the Grenadines.

15. Mrs. HIGGINS expressed satisfaction that the reporting State had acceded to the Optional Protocol. The question inevitably arose as to why the initial report of Saint Vincent and the Grenadines had been submitted so late. The submission of reports was a basic obligation under the Covenant and a means of demonstrating compliance with it. The report under consideration was somewhat brief. The

(Mrs. Higgins)

Committee's guidelines clearly indicated what information was required, particularly on legislation and legal cases. Reporting States were encouraged to inform the Committee of difficulties and problems they had encountered in complying with the Covenant. She wished to know whether the general public in Saint Vincent and the Grenadines knew about the dialogue that had begun between their Government and the Committee, and asked what had been done to publicize the country's accession to the Optional Protocol.

16. Section 1 of the Constitution did not seem to cover all the non-discrimination requirements laid down in article 2 (1) of the Covenant, such as the requirement not to make any distinction as to language, national or social origin, birth or other status. She asked whether section 16 (2) of the Constitution included the right to compensation, which was a requirement in certain cases under the Covenant. Referring to section 38 (3) of the Constitution, she asked why it had been felt necessary to provide for the possibility of altering enshrined rights and whether that provision had ever been used.

17. She wished to know whether capital punishment was limited to the most serious crimes, as required under article 6 (2) of the Covenant? The age limit for the death penalty under the Criminal Code was clearly incompatible with the Covenant and the Committee very much hoped that the Code would be brought into line with the Covenant in that regard. She asked why corporal punishment had recently been introduced under the Criminal Code and whether there was a minimum age limit for such punishment.

18. The Committee would appreciate information on prison conditions in Saint Vincent and the Grenadines. There had been reports that as many as 50 prisoners slept on bare floors in Kingstown prison. Were there any plans to improve prison conditions and were recreation facilities available for daily exercise? She requested an explanation of the reference in section 12 (3) (d) of the Constitution to "the imposition of restrictions on the freedom of movement of any person who is not a citizen".

19. The Committee wished to know whether there was a right of appeal under the Constitution. There seemed to be quite a backlog of cases owing to a lack of magistrates to hear preliminary inquiries. She would appreciate further information on steps to improve that situation. What constitutional provisions safeguarded the rights laid down in article 17 of the Covenant, particularly in respect of surveillance and wire tapping? She would appreciate an explanation of the phrase "except with his own consent, a person shall not be hindered in the enjoyment of his freedom" of conscience and expression in sections 9 and 10 of the Constitution. Under section 64 of the Criminal Code, any person who published a false statement, rumour or report likely to cause fear and alarm was liable to one year's imprisonment. That type of provision was often found in the legislation of undemocratic societies and did not seem to be in accordance with article 19 of the Covenant.

20. Mr. MAVROMMATIS said that he was aware of the difficulties encountered by newly independent countries in fulfilling their reporting obligations. The introductory statement by the representative of Saint Vincent and the Grenadines provided useful information supplementing the brief written report. The guidelines for reporting should have been followed more closely, however. Much remained to be done to bring domestic legislation into line with the Covenant. In particular, the Government should amend the Criminal Code as soon as possible in order to abolish the death penalty.

21. According to paragraph 5 of the report, the amplitude of the powers of the courts under section 16 of the Constitution ensured implementation of the provisions of the Covenant. He did not feel that section 16 of the Constitution provided any panacea for dealing with shortcomings or discrepancies in that regard. Furthermore, the statement in paragraph 6 of the report that there were no factors or difficulties affecting the enjoyment of the rights protected by the Covenant was very sweeping. The Committee had yet to encounter a reporting State that had not experienced any difficulties in implementing the Covenant. Problems inevitably arose from numerous factors such as ingrained prejudice, customs, economic difficulties and various emergency situations.

22. With regard to article 3 of the Covenant, he wished to know whether the legislation recently enacted to give women nationals married to foreigners the same rights as men married to foreign women also gave women nationals the right to pass their nationality on to their children born abroad. If so, did such a provision apply also in the case of a foreign woman married to a man who was a national?

23. More information was needed with regard to article 5 of the Covenant, which was not adequately dealt with in the report. With regard to article 6, he wished to associate himself with the comments made by Mrs. Higgins. Turning to article 8, he asked whether there was military conscription in Saint Vincent and the Grenadines. If so, what was the age of conscription and were conscientious objectors recognized?

24. With regard to article 11 of the Covenant, which provided that no one should be imprisoned merely on the ground of inability to fulfil a contractual obligation, he believed that most common-law countries had procedures whereby non-compliance with debtors' summonses or orders for monthly payments could give rise to imprisonment. He wished to point out that wherever such provisions existed, they should be examined in the light of the relevant provision of the Covenant. With regard to article 12, he would like to know whether there was complete freedom of movement and settlement in Saint Vincent and the Grenadines or whether there were certain restrictions. He noted that the Constitution made reference to certain designated areas. Did that provision apply only to persons who were free on bail or was it more general?

25. He wished to draw attention to the fact that the scope of article 14 of the Covenant, on the equality of all persons before the courts and tribunals, was not limited to criminal courts. The reference in the Saint Vincent Constitution was only to criminal courts and cases, however. He appreciated the explanation given

(Mr. Mavrommatis)

by the representative of Saint Vincent and the Grenadines regarding the fact that supreme court judges were appointed for the whole eastern Caribbean region and that they were not on the bench when cases from their particular country were tried. However, the independence of the judiciary also depended on judges having security of tenure. Were there safeguards of that kind in Saint Vincent and the Grenadines?

26. With regard to the right of freedom of association with others, including the right to form and join trade unions (article 22 of the Covenant), he asked whether civil servants were allowed to belong to trade unions. Was the right to strike restricted? Was there any special provision on strikes by persons employed in essential services?

27. Lastly, referring to article 26 of the Covenant, he pointed out that since Saint Vincent and the Grenadines was a party to the Optional Protocol, it was bound to ensure equality before the law not only in the case of rights envisaged under the International Covenant on Civil and Political Rights, but also in some cases which went beyond those rights and into the field of economic rights, which would include social and welfare benefits.

28. Mr. COORAY observed that it would have been useful if the report had included more information on administrative measures and practices in connection with each of the rights envisaged in the Covenant, as well as on any restrictions there might be on the enjoyment of those rights. He had noted with surprise the statement in paragraph 6 of the report that there were no factors or difficulties affecting the enjoyment of the rights protected by the Covenant. It was safe to assume that no country was entirely free of such difficulties, which might be caused by lack of economic opportunities, the injustices of the world economic order, lack of economic development or other reasons which were essentially beyond that country's control.

29. Paragraph 1 of the report stated that all the civil and political rights referred to in the Covenant were substantially protected by the Saint Vincent Constitution Order 1979. As other members of the Committee had pointed out, the articles of the Covenant were not entirely covered by the matching provisions of the Constitution. On becoming a party to the Covenant, the Government of Saint Vincent and the Grenadines had undertaken, under article 2 (2) of the Covenant, to take the necessary steps, in accordance with its constitutional processes and with the provisions of the Covenant, to adopt such legislative or other measures as might be necessary to give effect to the rights recognized in the Covenant. However, according to paragraph 2 of the report, the provisions of the Covenant could not be invoked before or directly enforced by the courts, other tribunals or administrative authorities, but could indirectly be enforced by the courts to the extent that they were subsumed in comparable provisions of the Constitution and the ordinary statute law of Saint Vincent and the Grenadines. He wished to know what would happen if, in a particular case, a person claimed that a right had been violated by the executive branch, but that right was not entirely embodied in the Constitution and the law. What would happen if there was a conflict between a provision of the Covenant and a provision of the Constitution or

(Mr. Cooray)

the law of Saint Vincent and the Grenadines? Had there been any judicial decisions regarding the implementation of the Covenant, or cases where reference has been made to the provisions of the Covenant in interpreting the Constitution or the law? He endorsed the comments made by Mrs. Higgins and Mr. Mavrommatis concerning the Constitution's omissions in that regard.

30. Although article 6 (5) of the Covenant provided that sentence of death should not be imposed on persons below 18 years of age, under section 24 (2) of the Saint Vincent Criminal Code the death penalty could be imposed on persons aged 16 and over. He would like to know whether any attempt had been made or was being made to bring the Criminal Code into line with the Covenant. He noted that section 5 of the Constitution, which stated that no person should be subjected to torture or to inhuman or degrading punishment or other treatment, was in line with article 7 of the Covenant. However, section 23 (1) of the Criminal Code provided for corporal punishment for male persons of any age. There seemed to be some legal basis for arguing that judicial corporal punishment constituted degrading punishment. He wished to know whether there had been any judicial review in Saint Vincent and the Grenadines of the meaning of "degrading punishment", as envisaged in section 5 of the Constitution, in relation to judicial corporal punishment?

31. Turning to article 10 of the Covenant, he had received information that prison conditions in Saint Vincent and the Grenadines were deplorable and that there was serious overcrowding, with a large number of prisoners sleeping on the bare floor in some cases. That was in violation of the Standard Minimum Rules for the Treatment of Prisoners, especially rules 9 and 10 on accommodation. He realized that developing countries could not be expected to have ideal conditions, but the Standard Minimum Rules should be observed. He had also received reports of extremely insanitary conditions in prisons, as observed by the Human Rights Association of Saint Vincent. He would appreciate some information on those matters. Were prison inspections carried out by persons independent of the prison authorities and what methods and principles were used in the selection and training of prison officials? Did they receive information about the Standard Minimum Rules? What procedures were followed in receiving and investigating complaints? To what extent had complaints been made and what results had they brought?

32. Article 14 (3) (c) of the Covenant stipulated that persons charged with a crime must be tried without undue delay. He understood that there was a large backlog of cases in Saint Vincent and the Grenadines and that there were not enough magistrates to hear preliminary inquiries. Why had more magistrates not been appointed? Were there other reasons for the excessive delays, which in fact amounted to a denial of justice? He had not been able to follow fully the explanation about the exact powers of the Judicial and Legal Commission. One would have thought that there would be provisions in the Constitution governing the appointment and removal of judges. Such provisions were crucial to the independence of the judiciary. Yet the provisions regarding judicial tenure and independence usually found in British-made constitutions were conspicuously absent. Why was that? The independence and security of tenure of judges were so important that they should be entrenched in a supreme law. Was the Judicial and

(Mr. Cooray)

Legal Commission concerned with the appointment of all judges or only of those at the lower levels? Could judges' salaries and emoluments be reduced during their term of office?

33. With regard to article 19 of the Covenant, he noted that under section 64 of the Criminal Code, any person who published false statement, rumour or report likely to cause fear and alarm or to disturb the public peace was guilty of an offence and was liable to imprisonment. Such a provision was open to interpretation and could lead to infringements of the Covenant, and we wished to know whether anyone had actually been charged under it. Was a licence or other Government authorization required to start a newspaper? He would welcome further information on ownership and control of the media and on freedom of the press.

34. Lastly, he noted that the report did not contain any reference to article 27 of the Covenant, on the rights of persons belonging to minorities. Were minorities in Saint Vincent entitled to preserve their culture, practise their religion and use their own language?

35. Mr. WENNERGREN endorsed the comments already made in connection with article 6 of the Covenant. Since the Government of Saint Vincent and the Grenadines had not entered any reservations on ratifying the Covenant, it was under an obligation to amend its legislation to bring the minimum age for imposition of the death penalty into line with article 6 (5) of the Covenant. Could the representative of Saint Vincent and the Grenadines provide some statistics on the application of the death penalty and on the number of prisoners currently under sentence of death?

36. He would also like to have some information on the use of firearms by the police and on the regulations applied in that regard. How often had police actually killed someone in performing an arrest? Were statistics available on deaths as a result of the use of firearms by police?

37. Article 7 of the Covenant stipulated that no one should be subjected without his free consent to medical or scientific experimentation. There was no reference to that provision in the Saint Vincent Constitution. Was that right guaranteed in some other law? How could the fact that the Criminal Code allowed for corporal punishment be reconciled with the provision in article 7 of the Covenant prohibiting torture and cruel, inhuman or degrading treatment or punishment? Was corporal punishment applied in schools? He would like to have a general idea of the practice and rules regarding corporal punishment.

38. With regard to article 9 of the Covenant, he noted that section 3 (1) (h) of the Constitution allowed for the possibility of detaining vagrants. What were the regulations governing the detention of vagrants? What was understood by the term "vagrant"? What was the practice with regard to the treatment of vagrants?

39. Article 11 of the Covenant stated that no one should be imprisoned merely on the ground of inability to fulfil a contractual obligation, yet section 3 (1) (c) of the Constitution allowed for deprivation of liberty in execution of the order of

(Mr. Wennergren)

a court made to secure the fulfilment of any obligation imposed by law. The Human Rights Association of Saint Vincent had informed the Committee that if a court ordered a person to pay a sum of money within a given period and the person failed to do so, he had to go to prison. Was that practice compatible with article 11 of the Covenant?

40. Turning to article 16 of the Covenant, he noted that section 8 of the Constitution dealt only with persons charged with criminal offences. He did not see any acknowledgement of the right of all other persons to recognition as a person before the law. How was that right guaranteed in the legal system of Saint Vincent and the Grenadines?

41. Other members of the Committee had commented on section 64 of the Criminal Code, under which any person who published a false statement likely to cause fear and alarm was liable to imprisonment. Enforcement of that provision depended on how it was understood and applied. He agreed with Mrs. Higgins that the provision was undemocratic; it could also be a serious hindrance to journalists and lead to an infringement of freedom of the press. What was its purpose and how was it put into practice?

42. Turning to article 23 of the Covenant, he had noted from the statement by the representative of Saint Vincent and the Grenadines that legislation had been enacted recently guaranteeing equality of spouses in matters of citizenship. He would like more information on practical equality between spouses in such areas as household management, family finances and travel. Was there full equality in every respect? He would also like further information on equality for minors of both sexes. Article 23 (2) of the Covenant mentioned the right of men and women of marriageable age to marry. What was considered a marriageable age in Saint Vincent and the Grenadines? Were there any restrictions on the right to marry, other than natural ones such as prohibitions against incest?

43. Mr. DIMITRIJEVIĆ said that the focus of attention in the Committee was the individual human being, and he assured the representative of Saint Vincent and the Grenadines that any country, irrespective of its size, would be subject to the same scrutiny. The Committee was also aware that a country's degree of development affected the implementation of human rights, but it applied the same yardstick to all countries in order to encourage the greatest possible effort towards compliance with the Covenant.

44. A constitution was a legal instrument that was tested in practice, and it would be more useful to the Committee to know how the Saint Vincent Constitution was being implemented than simply to read a list of provisions that were in line with the Covenant. He would welcome more information on the interpretation of the Constitution of Saint Vincent and the Grenadines by the judiciary.

45. The oral introduction had somewhat softened the statement in paragraph 6 of the report that "no factors or difficulties" affected the enjoyment of rights protected by the Covenant. In none of the over 80 countries that had submitted

(Mr. Dimitrijević)

reports to the Committee had that been found to be true. Human rights were violated not only by Governments, but also by non-governmental constraints or influences. For example, in many countries, women had been granted full constitutional rights, but society prevented them from enjoying those rights.

46. In developing countries, scarce resources often caused problems relating to article 10 of the Covenant regarding treatment of persons deprived of their liberty and the Standard Minimum Rules for the Treatment of Prisoners. Under the Covenant, the purpose of punishment was not revenge, but social rehabilitation. He would be interested in the statistics on recidivism in Saint Vincent and the Grenadines, and information on the success of the correctional system and the effects of treatment of prisoners on their eventual return to society.

47. Turning to questions concerning specific articles of the Covenant, he wondered whether, in section 25 of the Constitution, language discrimination had been omitted by oversight, or whether English was truly universal in Saint Vincent and the Grenadines. He would welcome more information on other languages commonly used that would place a person at a disadvantage before the courts.

48. The discrepancy between the minimum age for imposition of the death penalty under article 6 of the Covenant and the minimum age for its imposition under the Constitution had been previously mentioned. He inquired whether there were any plans to abolish the death penalty, and if it was mandatory for certain offences. A definition of the crimes considered most serious and punishable by a sentence of death would be useful.

49. Article 7 of the Covenant provided for protection for everyone from torture or inhuman or degrading punishment. However, the Constitution allowed men to be subjected to corporal punishment, and that appeared to be a form of sex discrimination. He requested more information on the kind of corporal punishment allowed, before deciding whether it was degrading or cruel.

50. Regarding the protections against imprisonment for debt provided in article 11 of the Covenant, he wished to know whether persons had been imprisoned for non-compliance with a court order under section 3 of the Constitution.

51. The provisions against publishing false statements or rumours were very dangerous. More information on how those provisions were implemented was needed. He asked whether the defendant was allowed to prove to the court that such statements were true, or that he had believed them to be true.

52. He would also welcome more information on trade unions and whether collective bargaining was part of their right of freedom of association.

53. Mr. AGUILAR said that he was encouraged that Saint Vincent and the Grenadines had demonstrated its intention to enter into a dialogue with the Committee through its initial report, and he was sure that its second periodic report would be more complete.

54. Referring to the report, he requested more detailed information on the status of the Covenant with respect to the law and Constitution of Saint Vincent and the Grenadines. He wanted to know what guarantees were provided that legislation would not derogate from the norms of the Covenant, how citizens could lay claim to their rights under the Covenant, as stated in paragraph 2 of the report, if the law allowed for derogation from those rights and what were the criteria for applying to the High Court as a court of first instance, as stated in paragraph 4.

55. With regard to section 13 of the Constitution as it related to article 2 of the Covenant, it would be useful to know in what cases exceptions were permitted regarding the rights of foreigners in the territory of Saint Vincent and the Grenadines, and whether foreigners were protected under any other law. The measures taken or planned to prevent derogations from Covenant rights, especially by a law contrary to those rights, should be explained.

56. He requested clarification of the responsibilities of Permanent Secretaries of ministries and asked whether those were decision-making posts. He would also welcome specific information on the percentage of women in high schools and universities and the professions.

57. He asked whether there were specific exceptions to rights under section 14 of the Constitution and article 4 of the Covenant that could be suspended during a state of emergency. It would also be useful to know the extent to which legislation in Saint Vincent and the Grenadines complied with Covenant guarantees of rights and how the Constitution could be amended. He would welcome clarification concerning the precise status of the Covenant in the judicial system and in domestic legislation.

58. He inquired whether concrete steps had been taken to abolish the death penalty in Saint Vincent and the Grenadines and associated himself with the concerns expressed by Mrs. Higgins and Mr. Dimitrijević. Section 2 of the Constitution listed a number of cases where death might occur without criminal offence. Such latitude could lead to abuse, and further information concerning limitations on those provisions would be useful.

59. Under section 151 (a) of the Constitution, the allowable delay of seven days for notification of the reasons for detention seemed excessive, and he asked for clarification concerning the conditions that could lead to such a delay.

60. He agreed with the concern expressed by Mr. Mavrommatis that imprisonment for non-compliance with contractual obligations was not prohibited. He was surprised that in section 8, paragraph 2 (d), no provision was made for free legal counsel, but that the court would provide an interpreter at no cost, and requested an explanation for making such a distinction.

(Mr. Aguilar)

61. Article 18 of the Covenant appeared to be contradicted by section 9, paragraph 5 (a) of the Constitution. Further information on mandatory military service and the situation regarding protection of conscientious objectors would be helpful.

62. He joined Mrs. Higgins in requesting that specific cases be cited where a citizen could consent to restrictions on the enjoyment of his freedom of expression, as stated under section 10 of the Constitution.

63. More information was needed on the conditions and authority under which Parliament might disqualify a person as a registered voter. He inquired about the right of citizens to appeal decisions of Parliament.

64. In response to paragraph 6 of the report, he was pleased to note that non-governmental organizations had not transmitted much information regarding Saint Vincent and the Grenadines; therefore, most rights of citizens were no doubt protected. However, like Mr. Cooray, he did not believe that a human rights paradise existed. Caribbean nations like his own shared many economic problems and needed to see how they could progress together towards the achievement of human rights goals.

The meeting rose at 1 p.m.

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HUMAN RIGHTS COMMITTEE

Thirty-eighth session

SUMMARY RECORD OF THE 954th MEETING

Held at Headquarters, New York,
on Tuesday, 20 March 1990, at 3 p.m.

Chairman: Mr. LALLAH

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Initial report of Saint Vincent and the Grenadines (continued)

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of Saint Vincent and the Grenadines (continued) (CCPR/C/26/Add.4)

1. At the invitation of the Chairman, Mr. Campbell (Saint Vincent and the Grenadines) took a place at the Committee table.

2. Mr. ANDO asked for clarification of section 3 (b) of the Constitution: deprivation of liberty for contempt of court was probably conceived as an extension of the British concept of contempt of law, but might be construed as a restriction of personal freedom. It would also be useful to have a fuller explanation of the exception made at the end of sections 7 (2) and 10 (2) of the Constitution regarding provisions or actions taken that were "not ... reasonably justifiable in a democratic society".

3. He wondered who had jurisdiction over the conscription system, in the absence of a military tribunal; and, with regard to prison conditions, whether juveniles were separated from adults and what the age of criminal maturity was. Concerning freedom of expression, was there a television system in the country and was it in government or private hands? In relation to freedom of association, he would like more information on the legislation governing the establishment of trade unions, their collective-bargaining rights and the right to strike.

4. Mr. FODOR observed that the Constitution adequately reflected most but not all of the rights in the Covenant and that the report should have provided more information on actual practice. No statistics, for instance, on the current situation with regard to the professional status of women had been provided.

5. The four sections of the Constitution corresponding to article 4 of the Covenant - sections 14, 15, 16 and to a certain extent 17 - nowhere indicated which rights admitted of no limitation or derogation. Regarding the deprivation of the liberty of persons who, under section 3 (1) (h) of the Constitution, were or were reasonably suspected to be of unsound mind, he wondered whether a suspicion was the only prerequisite for such deprivation of liberty or whether a court order was also necessary, and also what authority was competent to determine the suspicion. He would also like information on restrictions on a non-citizen's freedom of movement under sections 12 (1) and 12 (3) (d) of the Constitution; and on whether, in the interests of the administration of justice, a person was entitled to have legal assistance under section 8 (2) (d) of the Constitution and to obtain records of proceedings under section 8 (3), if he could not afford to make the required payments.

6. Mr. WAKO said that despite the acknowledged shortcomings of the report, the detailed information given orally had permitted a constructive dialogue.

(Mr. Wako)

7. The Committee's general comments on articles 6 and 7 of the Covenant were very clear regarding the obligation to provide protection against killings by security forces and to prevent cases of disappearance. It would be interesting to know what procedures were available to investigate police actions and particularly police treatment of detainees. Specific information on the security of tenure of judges would also be useful.

8. Those provisions of section 8 of the Constitution that differed from article 14 of the Covenant required clarification: subsection (2) (b) used the term "as soon as reasonably practicable", rather than "promptly" as in article 14 (3) (d) of the Covenant; the stipulation in subsection (2) (d) that a defendant could be provided with legal assistance at his own expense conflicted with article 14 (3) (d) of the Covenant, and it would be useful to know if there were in practice any legal-aid schemes that complied with the Covenant, especially in capital offences; and the proviso in subsection (2) (f) regarding the circumstances in which a defendant could be tried in his absence had no counterpart in the Covenant. Similarly, sections 9, 10 and 11 of the Constitution governing the freedoms of conscience, expression, assembly and association all began with the words "except with his own consent", whereas in the Covenant the rights in question were all absolute.

9. On the other hand, some of the rights enumerated in the Constitution seemed to go beyond those in the Covenant, which was commendable. Article 25 of the Covenant was limited to citizens, but sections 25 and 26 of the Constitution, if he understood them properly, were not so limited. Section 26, however, was somewhat restrictive as well: it was not clear why ministers of religion were precluded from serving in Parliament.

10. Reading section 16 of the Constitution in conjunction with sections 98 and 99, it was unclear whether in civil and criminal proceedings, after appeals to the High Court and to Her Majesty in Council under sections 98 and 99, a defendant could proceed to make the same series of appeals again by invoking the special provisions of section 16 when human rights issues were involved.

11. With reference to article 27 of the Covenant, details should be given about the composition of the population of the country, whether there were any minorities and, if so, whether they had all the rights guaranteed under the Covenant.

12. Mr. PRADO VALLEJO asked how extensively the Covenant had been publicized in the country and at what levels of society. He was particularly concerned that it was currently impossible to invoke the Covenant in the courts of Saint Vincent and the Grenadines. Experience had shown that, of the different ways of incorporating the Covenant into domestic law, the best was the one which allowed a citizen to invoke it directly. Such a possibility would, for instance, afford a means of defence against the death penalty for juveniles under the age of 16.

13. Under the 1988 Criminal Code, section 64, the spreading of rumours that might cause alarm was punishable by one year in prison. It was unclear what was meant by

(Mr. Prado Vallejo)

"causing alarm", or what remedies were available in the case of abuses in the application of that provision.

14. Apparently, the treatment of prisoners in Saint Vincent and the Grenadines was inhumane in certain respects, as when, for instance, they were kept locked in their cells from 2 p.m. without any period of recreation. Such intolerable conditions would seem to be avoidable.

15. Mr. POCAR associated himself with the questions raised by Mrs. Higgins and Mr. Mavrommatis relating to article 11 of the Covenant and by Mr. Aguilar and Mr. Fodor relating to article 13 (4). With reference to the right to life under article 6 of the Covenant, the corresponding section 2 (2) of the Constitution was too broad in listing the circumstances under which it was permissible to use force to deprive a person of life, especially in the light of the Committee's general comment on article 6, which pointed out that the deprivation of life by the State was a matter of the utmost gravity and that therefore the law must strictly control and limit the circumstances in which its authorities might do so. He asked whether the existence of the circumstances listed in section 2 (2) justified the deprivation of life even if it was intentional, and how the use of force in the cases listed was regulated. More details should be provided on the relevant legislation and especially on the practice in implementing it.

16. Mr. NDIAYE said that he did not understand the reasoning behind the establishment of the post of Senator in Saint Vincent and the Grenadines or the functions of the Senators in Parliament (section 28 of the Constitution), since they did not represent specific political subdivisions or a particular constituency and were, moreover, divided into two unbalanced categories, in support of and in opposition to the Government. He also would like to know the exact powers of the Governor-General. Section 59 of the Constitution seemed to be a well-regulated provision for the Leader of the Opposition in Parliament, but he wondered if there was any legislation governing a parliamentary opposition as such, or a non-parliamentary opposition.

17. He suggested that the representatives of Saint Vincent and the Grenadines might consider supplying the Committee with written comments on the questions which had been raised by most members, particularly with reference to articles 6, 7, 10, 11, 14, 19 and 22 of the Covenant, as had been done by the St. Vincent and the Grenadines Human Rights Association.

18. Mr. CAMPBELL (Saint Vincent and the Grenadines) said that some of the questions which had been raised, particularly those calling for statistical information and details about court cases, would require further research.

19. Saint Vincent and the Grenadines had a homogeneous population composed of peoples of various racial origins; there were no identifiable ethnic minorities. About 75 per cent of the population was descended from people who came from Africa, about 15 per cent was descended from Europeans, and the rest of the population was descended predominantly from people who had come from India, with a small percentage of indigenous Caribs. There was one language - English. There were no

(Mr. Campbell, Saint Vincent and the Grenadines)

dialects and no major variations. For that reason, the framers of the Constitution had not considered it necessary to refer to discrimination on the grounds of language.

20. Section 101 of the Constitution of Saint Vincent and the Grenadines stated that the Constitution was the supreme law. Any law in conflict with the Constitution must be regarded as null and void to the extent of that conflict. When Saint Vincent and the Grenadines wished to observe treaties and conventions in their full amplitude, they were incorporated into domestic legislation. Where they conflicted with the Constitution, the conflicting provisions could have no effect. That would continue to be the case as long as the current Constitution remained in force. The Covenant had not been incorporated into domestic legislation because some of its provisions were in conflict with chapter 1 of the Constitution, which dealt with the protection of fundamental rights and freedoms. The Government had no plans to amend the Constitution in that regard, particularly because such an amendment would require a two-thirds majority vote in Parliament as well as a two-thirds majority of the popular vote.

21. However, if the entire Constitution was changed, the section on human rights could be altered to incorporate all the human rights provisions which the Government considered necessary. Over the past three years, Saint Vincent and the Grenadines had been considering the possibility of political unification with Dominica, Saint Lucia and Grenada. If the four countries became united, the new State would have to draft a constitution, which could incorporate most of the provisions of the Covenant, with some possible reservations.

22. The information additional to the initial report of Saint Vincent and the Grenadines, prepared by the St. Vincent and the Grenadines Human Rights Association and dated 16 March 1990, contained two clear falsities and one misleading paragraph. According to the additional information, no less than 45-50 prisoners slept on the bare floor in a building on the compound of the Kingstown Prison; that was not true. As Minister of Justice, his responsibility extended to the administration of the prisons, and he wished to assure the members of the Committee that no prisoner in Saint Vincent and the Grenadines slept on the bare floor. He invited the Committee to send a delegation to examine the human rights situation in general and the situation in the prisons in particular. The additional information also stated that prisoners had no recreation; that was not true. All prisoners except those with a propensity for violence and those who had vowed that they would escape if given the opportunity were allowed daily recreation.

23. The St. Vincent and the Grenadines Human Rights Association also claimed that prisoners were often beaten by guards. While prisoners were not beaten often, there had been cases in which guards had beaten prisoners. As Minister of Justice, he had spoken out against the brutality which some guards occasionally meted out on prisoners. In cases where a prison guard was suspected of having beaten a prisoner, the prison authorities took disciplinary measures. Recently, when disciplinary action had been taken against a prison guard who had brutalized a

(Mr. Campbell, Saint Vincent and the Grenadines)

prisoner, the trade union representing prison officers had picketed the prison compound and called for a strike.

24. Saint Vincent and the Grenadines had a prison-visiting committee composed of several persons, including ministers of religion and medical doctors, appointed by the Governor-General. The committee visited prisons quite regularly. On the whole, prisoners who had complaints could be heard and their complaints were generally dealt with.

25. The prisons had been built in the early twentieth century to accommodate 75 prisoners. Over the years, additions had been made but the prison population had risen to about 280, whereas the normal prison population should be no greater than 150. Last year, the Government had decided to build new prison facilities and had allocated money for preparatory work. A new facility would place emphasis on agriculture, vocational training and rehabilitation.

26. Unfortunately, juveniles could not be separated from adult prisoners because of a lack of space. Juveniles were given the opportunity to learn trades in prison bakeries, tailor shops, shoemaker shops and carpentry shops. All the innovations made at prisons in Saint Vincent and the Grenadines over the past six years were attributable to the work of skilled prison officers and skilled prisoners. While prison conditions were bad, there was nothing untoward taking place in the prisons and there was no wholesale violation of human rights. The situation was far from ideal but that was not due to a lack of consideration or sympathy on the part of those in authority.

27. The additional information prepared by the St. Vincent and the Grenadines Human Rights Association contained another inaccuracy, in so far as only the first of the two subsections of section 64 of the Criminal Code 1988 had been quoted. Under subsection 2, it would be a defence to a charge under subsection 1 if the accused person proves that, prior to the publication, he took such measures to verify the accuracy of such statement, rumour or report as to lead him reasonably to believe that it was true. Many members of the Committee had asked whether there was a mechanism in the law of Saint Vincent and the Grenadines to safeguard a person who had made a statement innocently; there was. As was made clear by subsection 2, section 64 dealt also with false statements the accuracy of which had not been verified by their makers.

28. In a country made up of small communities in which the "grapevine" was very active, Saint Vincent and the Grenadines had considered it necessary to have a provision prohibiting persons from manufacturing statements which were likely to cause fear or alarm or to disturb the public peace. Section 64 was not intended to curb freedom of speech and, as worded, could not curb that freedom. A challenge had been launched against section 64 and the matter was currently before the High Court. However, the Government had received a report from London of a case brought against the Attorney-General of Antigua, in which a similar law in Antigua had been challenged. The sole difference was that the law dealt with statements critical of the Government. The Privy Council of Antigua had deleted the part of the law which

(Mr. Campbell, Saint Vincent and the Grenadines)

dealt with statements against the Government but had retained that part which dealt with false statements. He would inform the Committee of the High Court's ruling on section 64.

29. Mrs. Higgins had asked what was being done to inform the people of Saint Vincent and the Grenadines of the Human Rights Committee's consideration of the initial report of Saint Vincent and the Grenadines. While the St. Vincent and the Grenadines Human Rights Association was certainly aware of his visit, he did not think that the general public had been informed of it. For the security of his family, he made it a policy not to publicize his trips abroad. During his previous publicized absences, his family had been attacked and there had been attempts to vandalize his property. When he returned from trips abroad, he gave reports, on radio and television, regarding the business in which he had been engaged.

30. Saint Vincent and the Grenadines had removed all legal disabilities from children born out of wedlock. The Government had come under attack by responsible persons in society who had claimed that the status of marriage was being undermined. That was a matter which required serious consideration, since it was necessary to show that the institution of marriage had meaningful attributes which non-marital situations did not have.

31. With regard to section 16, it had been asked whether the High Court could order compensation for the violation of rights. That was a question for which there were no clear-cut legal answers. There were a few decisions in the High Court and the Privy Council which tended to indicate that, in a proper case, compensation could be ordered. However, he could not recall having seen such a proper case. While compensation could not be ruled out, the right to compensation had not been absolutely established. Damages could be obtained in such cases as false imprisonment and wrongful arrest, where normal common law provided a remedy. However, the law courts had not yet clearly decided what damages were available for the prohibition of the right to free speech.

32. With regard to section 38, the question had been asked why it was so difficult to alter the sections of the Constitution dealing with human rights. Human institutions were less than perfect, and there were philosophical differences among people as to how far one generation should go in determining norms for future generations. While he believed that laws should be susceptible to alteration, he considered that, in the case of human rights laws, the alteration process should be very difficult in order to prevent those laws from being changed at the whim of a particular government.

33. Since the Constitution had been in effect there had been only two amendments, both made under the current Government. One amendment had increased the number of elected positions in a particular district from 13 to 15, and the other had removed the disability of women, who did not have the automatic right to register their husbands as citizens.

(Mr. Campbell, Saint Vincent and the Grenadines)

34. Capital punishment was limited to high treason, murder and genocide. High treason referred to the murder or attempted murder of Her Majesty the Queen or of her representative the Governor-General. There had never been a case of high treason in Saint Vincent and the Grenadines. The definition of genocide was the same as that contained in the Convention on the Prevention and Punishment of the Crime of Genocide. Capital punishment was carried out rarely and only in the case of brutal murders. There was no distinction between first- and second-degree murder. In most murder cases, the death sentence was commuted. Murderers were executed only in cases where the population was highly inflamed and there was agitation for the execution to take place.

35. He would raise the matter of the discrepancy in the age - between 16 and 18 - of persons who could be executed for murder with the Cabinet. While he did not have a mandate to commit the Cabinet to a fixed position, he hoped that the Committee would not be disappointed with the results. The phrase "if it appears to the court" occurred in about every piece of legislation and, with regard to the court's determination of the age of the accused, was innocuous since age had to be proved.

36. As for corporal punishment, it had existed before 1983 in the form of flogging and caning. In 1983 flogging had been abolished while the caning of juveniles was retained, but under carefully controlled conditions, including medical supervision. The purpose was correction, not brutality. Corporal punishment was an institutionalized cultural norm in his country and could not be ignored. The vast majority of the population would be very upset if corporal punishment by parents and teachers were to be ended, because it was considered an effective strategy against truancy.

37. Experience showed no negative effects from such punishment, which was still useful in a country where the absence of extensive welfare services created a need for discipline in the home and in the school. Caning, when deemed necessary by the judge, could be extended to young adults as a further deterrent. The authorities had even been urged by one senior judge to restore flogging because it was a more effective deterrent than prison. Some people even preferred prison to flogging. It was true, he admitted, that flogging constituted positive discrimination on grounds of sex because it was applied to men only.

38. Turning to the restriction on freedom of movement of non-citizens, he said that the Constitution gave Parliament the power to restrict such movement, but no laws giving effect to that provision had been enacted and none was contemplated, so that it was impossible to say under what circumstances it would operate.

39. Concerning the right of appeal, he drew attention to sections 98 and 99 of the Constitution and pointed out that that right was limited only in a few procedural matters. For example, a judge's decision to try a sex-related case in camera could not be appealed, but most judge's decisions could be appealed, even to the Privy Council in London.

(Mr. Campbell, Saint Vincent and the Grenadines)

40. There was a serious backlog of cases in the magistrate's court but the situation had improved in the past two years as a result of a liberalization of certain procedures designed to reduce it. For very serious matters, however, a preliminary inquiry was required in order to establish a prima facie case, and the backlog in those cases was still very serious despite the enlistment of private lawyers to assist. The problem was essentially one of budgetary restrictions, which made it impossible to recruit additional magistrates and support staff and to provide adequate courtroom facilities. His country was grateful to the United States for providing financial assistance to help his country enhance the delivery of justice by refurbishing the courts, establishing law libraries and similar measures.

41. The fact remained that human rights had a "price tag". Comprehensive legal aid, for example, was a service his country simply could not afford, and it therefore was provided only for those charged with capital offences, and even then, not at the preliminary inquiry stage. Many lawyers agreed to defend the poor without payment, but a legal-aid system was still necessary, and as a first step in that direction a law had been enacted to give the Solicitor-General the right to handle certain administrative cases free of charge for those who could not afford lawyers.

42. The law provided no special protection against surveillance, such as phone-tapping, but did have provisions against mail-tampering. In the matter of freedom of expression, certain public officials were required to take an oath of secrecy, which was tantamount to a voluntary surrender of that right. An employee could agree to the limtation of that right where his employer required secrecy in order to protect trade secrets.

43. As for the right to pass nationality on to children, he said that it was a complicated matter and he would report on it, as well as on the questions relating to articles 5 and 6, in the future. His country had no conscription because there was no military service, only a police force, which was a voluntary body. The police generally were not armed, except for the anti-drug unit, which needed firearms. Plainclothesmen who provided security for top officials also bore arms, but their weapons were not visible. People were rarely shot by the police but when they were a coroner's inquest was required. No police had ever been prosecuted for complicity in a shooting. His country's police were not trigger-happy, despite the fact that criminals were increasingly well armed, especially drug traffickers.

44. There were provisions in the law for the imprisonment of debtors, which was admittedly in contravention of article 11. There was complete freedom of movement in his country, but an alien required a land-holding licence. Equality before the court was assured for any court, not just criminal courts.

45. It was true that the independence of the judiciary was not stipulated in the Constitution, but it was provided for in other instruments, which he would make available. A judge's salary could not be reduced during his or her tenure and a judge's pension continued after death for the lifetime of his or her spouse.

(Mr. Campbell, Saint Vincent and the Grenadines)

46. The right to organize trade unions was ensured, and trade unions flourished. Even civil servants could belong to them and were entitled to time off from their duties if they were officials of trade unions. The right to strike was ensured, even in essential services, but there was no compulsory recognition of trade unions. The trade unions normally obtained such recognition through struggle, however.

47. The Covenant was not part of his country's domestic law because of jurisprudential difficulties. When the Covenant conflicted with the Constitution constitutional problems arose, but usually a rule of common law was found when needed. What mattered, however, was the attitude and practice of the authorities and the historical experience of the people, which were more important than having a model constitution. His Government did its utmost to ensure respect for human rights and there had been very few human rights challenges in his country. Wanton human rights violations by governmental authorities were very rare. Paragraph 6 of the report (CCPR/C/26/Add.4) was misleading in so far as it denied that there were any problems.

48. Between 1982 and 1987, his country had had five different attorneys-general, which meant an absence of continuity and delays in performing essential work. That was why the report was so late. Every effort was being made, however, to clear the attendant legislative backlog.

49. Replying to a question put by Mr. Cooray, he said that there were three national newspapers, all privately owned; in addition, all the political parties had journals of their own. All were published freely, without government interference of any kind. There was one privately-owned television station, which had given time to all the political parties during the 1989 elections. One radio station existed, which was operated as a public corporation free of government control.

50. With regard to the 1989 elections, he noted that when the date for them had been announced the Prime Minister had issued a blanket invitation to foreign observers to come and witness them - an invitation that had been widely taken up. As those observers could attest, the elections had been free and fair. In general, Saint Vincent and the Grenadines had nothing to hide with respect to its observance of human rights; it would, indeed, welcome a visit by the Committee at any time to see that for itself.

51. Mr. MAVROMMATIS said he was glad members of the Committee had put questions to the representative of Saint Vincent and the Grenadines, as the questions had given Mr. Campbell an opportunity to provide the Committee with full and candid information from which it could be deduced that a healthy respect for human rights existed in his country. Although there were some inconsistencies between the Constitution and the norms laid down in the Covenant, it seemed to him that those inconsistencies could be corrected without the need for constitutional amendments. Despite Mr. Campbell's explanation of the reasons for the continued legality of caning, he maintained his reservations with regard to that practice.

(Mr. Mavrommatis)

52. Summing up, he said that Saint Vincent and the Grenadines had now embarked on a fruitful dialogue with the Committee which seemed to augur well for the future of human rights in that country.

53. Mr. COORAY said that the Committee had had a constructive and useful dialogue with the representative of Saint Vincent and the Grenadines which had made clear that the situation of human rights in that country was healthy. He hoped that the new facilities now under construction would improve prison conditions. He maintained his reservations with regard to corporal punishment, although Mr. Campbell had explained the background for that practice very convincingly. On the question of the independence of the judiciary, he would wait for an opportunity to read the additional documents to be sent to the Committee before commenting further. Summing up, he said that, on the whole, he had been very satisfied with the answers given to his questions.

54. Mr. WENNERGREN thanked Mr. Campbell for the very frank answers he had given to his questions. The dialogue had shown that there were some discrepancies between the situation in Saint Vincent and the Grenadines and the Covenant. That was understandable. It was regrettable, however, that the procedure for amendment of the Constitution was apparently so difficult and complicated; he hoped that it would be possible to improve that situation. He wished to restate his objection to the continued existence of legislation restricting the freedom of the press, particularly the provision he had referred to previously requiring journalists to prove their innocence. It was his hope that those provisions, which were really not consonant with freedom of the press, would be revised.

55. Mr. AGUILAR said that Mr. Campbell's answers to the Committee's questions had been clear and frank. He hoped that the dialogue which had now been initiated would set a fruitful example for all the countries of the Caribbean region and wished particularly to commend Saint Vincent and the Grenadines for its lack of an army. That was a clear contribution to the most basic human right of all, the right to peace.

56. Mr. MYULLERSON said that the dialogue with the representative of Saint Vincent and the Grenadines had been clear and frank; he hoped that the comments made by members of the Committee would be taken into account by that country's Government.

57. He would wait for the further information with which the Committee was to be provided before commenting on the question of the incompatibility with the Covenant of the constitutional provisions regarding capital and corporal punishment.

58. Mr. FODOR thanked Mr. Campbell for his valuable and completely satisfactory responses to the questions he had raised. He had only two remaining reservations, the first relating to capital punishment for persons below the age of 18 and the second to imprisonment for debt. Some aspects of prison conditions in the country should be improved, and he hoped that they would be in the near future.

59. Mrs. HIGGINS thanked the delegation of Saint Vincent and the Grenadines and particularly Mr. Campbell, for their co-operation. She had been very satisfied with the answers given to her questions and hoped that the Government of Saint Vincent and the Grenadines would answer the questions of other members of the Committee equally fully. So far as the question of possible derogations from the Covenant by omission was concerned, she agreed with other members that the situation could be rectified without amendment of the Constitution.

60. Summing up, she said she was sure that the dialogue just concluded would provide the Government with a better idea of how future reports to the Committee should be drafted.

61. The CHAIRMAN said he was particularly grateful to the representative of Saint Vincent and the Grenadines for his very frank responses to comments by non-governmental organizations; such responses were of particular value to the Committee.

62. Mr. Campbell had expressed the opinion that any law establishing rights not already embodied in the Constitution would be unconstitutional. He was not sure that interpretation of the constitutional situation was correct. Article 2 of the Covenant referred to "legislative or other measures"; there were other actions Governments could take to further human rights in addition to passing legislation, for example, in their decisions regarding resource allocation.

63. He continued to have reservations regarding the constitutional provision referring to offences "causing alarm". That was too vague a concept and one that might lend itself to abuse.

64. Lastly, he expressed the hope that the fruitful dialogue now initiated would continue and that Mr. Campbell would take a personal part in the preparation of his Government's next report.

65. Mr. CAMPBELL (Saint Vincent and the Grenadines) thanked the Chairman and the Committee for the very warm comments they had directed to his delegation. He had learned much from the Committee and had a better understanding of its concerns with regard to the Covenant. The documents needed to complete his answers to some of the questions raised by Committee members would be submitted in the near future, and he wished to assure the Committee that his Government's next report would be fuller and more comprehensive.

The meeting rose at 6.10 p.m.

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Thirty-eighth session

SUMMARY RECORD OF THE 955th MEETING

Held at Headquarters, New York,
on Wednesday, 21 March 1990, at 10 a.m.

Chairman: Mr. LALLAH

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

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The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of Argentina (continued) (CCPR/C/45/Add.2)

1. At the invitation of the Chairman, Mrs. Regazzoli took a place at the Committee table.

2. Mrs. REGAZZOLI (Argentina) said that her delegation had done its best to provide all the available information requested by Committee members within the short time available, as a demonstration of the will of the Government of Argentina to fully respect the international human rights Covenants and its obligations deriving from them.

3. Regarding the place of the international Covenants in the legal heirarchy, articles 27 and 31 of the Argentine Constitution established a normative order: the Constitution first, followed by national legislation and international treaties, and last, provincial legislation, including provincial constitutions. The international human rights Covenants of 1966 were international treaties on an equal footing with national laws according to article 31, but ranked below the Constitution. Challenges to their applicability constituted a federal question that could, exceptionally, be brought before the Supreme Court of Justice.

4. The approval and ratification of the Covenant for integration into Argentine law required participation of both the executive power and the legislative power. Congress had the power to adopt or reject treaties; after endorsement by the executive branch, they became norms of international law. The executive branch had limited power to conclude treaties in simplified form without prior approval, but that power did not include human rights instruments. Article 31 of the Constitution stated that laws and treaties with foreign powers were supreme law, taking precedence over provincial law. However, neither article 31 nor article 100 proclaimed the primacy of international treaties over the law of the nation, a conclusion which had been upheld by the Supreme Court of Justice. Conflicts between national law and international law were resolved by applying the general principle that a subsequent rule took precedence over a prior rule on the same subject. The Covenant could be invoked in any jurisdiction, and any court could directly apply its provisions.

5. More information had been requested regarding the functioning of the "amparo" (protection) recourse. The remedy of amparo was reserved for very specific cases within the judicial system and would be commented on later. The Covenant or a human rights treaty could be invoked in the same way as any law. Any court of law could also invoke the provisions of the Covenants or international treaties.

6. Commenting on the competence of military courts and their relationship to civil courts, she said that in 1984, the Congress had introduced amendments to the

(Mrs. Regazzoli, Argentina)

Code of Military Justice relative to military jurisdiction, providing a transitional régime for the judgement of offences committed during the repression. The jurisdiction of the military courts had thus been reduced to strictly military matters, further limiting the possibility of a civilian being judged by a military court for civil offences. A mandatory appeal process to the civilian court having jurisdiction had also been instituted.

7. Further explanation on the concept of public hearings had been requested. The Code of Military Justice and the Law for the Defence of Democracy now provided for "public hearings" of charges, evidence and expert testimony before the court.

8. To date, seven officers of the armed forces had been sentenced for human rights violations. The Commission investigating the matter lacked precise data on the exact number of members of the armed forces and security forces detained on charges of human rights violations. In early October 1989, 34 persons were tried, many for several human rights offences.

9. According to an opinion handed down by the Supreme Court of Justice in 1984, the purpose of article 18 of the national Constitution was to prohibit ex post facto laws and trials by commissions named especially for a particular case, thereby removing the accused from the jurisdiction of the normal courts.

10. The victims of human rights violations had recourse to all civil and criminal remedies provided in the national judicial system, including administrative remedies if applicable. They also had the right to make claims before international bodies such as the Human Rights Committee, the Inter-American Committee on Human Rights and the Committee Against Torture.

11. In principle, it was a violation of the law not to immediately provide counsel for a detainee. The Code of Criminal Procedure required that a judge be informed of a violation and all relevant documentation be submitted to him within 24 hours of an arrest. No legal rule authorized the police to take a statement from a detainee, but a detainee had the right to make a telephone call regarding his whereabouts, which would enable a lawyer to begin representing him.

12. Further information had been requested regarding differences between the right of habeas corpus and the remedy of "amparo". The remedy of "amparo" was admissible in connection with any act by the public authorities that infringed, restricted or arbitrarily jeopardized any right recognized explicitly or implicitly by the Constitution with the exception of individual liberty covered by habeas corpus. The Civil and Commercial Code governing federal territory established the process for claims that an act or omission jeopardized a right or guarantee recognized in the Constitution. The right of habeas corpus was invoked when freedom of movement was restricted by the public authorities without a written warrant or an arrest was made illegally. Both "amparo" and habeas corpus could be invoked during a state of siege. Under article 23 of the Constitution, the process of habeas corpus could challenge the legitimacy of the declaration of a state of siege. It should also be noted that article 27 of the American Convention on Human Rights, which came into force on 5 September 1984, also covered that situation.

(Mrs. Regazzoli, Argentina)

13. The impact of Decree 392 of 1990 on the articles of the Covenant could not yet be determined, as the Decree had not yet taken effect. In any case, it would be applied with due regard for existing legal provisions governing protection of human rights. Decree 392 had been preceded by Decree 83 of January 1989 issued by President Alfonsin, after the La Tablada incident had demonstrated that the life, liberty and safety of Argentine citizens were in jeopardy. President Alfonsin had established a National Security Council, composed of the Ministers of Interior, Defence, Foreign Affairs and Religion, the Secretary of State for Intelligence, the Joint Chiefs of Staff and the heads of the armed forces. Its purpose was to advise the President on security matters and organized acts of violence, and to provide information to the federal judiciary. By Decree 392 of February 1990, President Menem had dissolved the National Security Council. By virtue of Decree 327, its advisory powers appeared to be divided between the National Defence Council and the Internal Security Committee. The National Defence Council advised the President on action to be taken when the validity of the Constitution was called into question or when the security of the State was threatened by serious internal upheaval. The Internal Security Committee had the function of planning for possible joint action by the police, security forces and armed forces in the case of threats to public order.

14. Article 21 of the Constitution stated that it was the duty of citizens to arm themselves for the defence of the nation. Thus, the executive branch had acted within its constitutional powers in issuing Decree 392. It must be noted that Argentina was a democracy, and the different powers of the executive and legislative branches provided checks and balances. That had not been the case during the de facto period, when the military had exercised discretionary powers.

15. With regard to the concept of due obedience, she noted that Act 23.492, of December 1986, had been promulgated in order to speed up the judicial process in cases of offences under article 10 of Act 23.049. The article provided that the Supreme Council of the Armed Forces continued to have jurisdiction over offences committed by military, security, police or correctional personnel under the operational control of the Armed Forces, who had carried out anti-terrorist activities between March 1976 and September 1983. Act 23.492 had put a stop to criminal proceedings against certain individuals who had allegedly committed offences under article 10.

16. Under Act 23.521, promulgated in June 1987, all civil charges during that period were declared to have effect. The Act, however, maintained as effective only those criminal charges filed against persons who, by virtue of belonging to the Armed Forces or security forces, had commanded or exercised decision-making powers in anti-terrorist operations.

17. It had been asked whether those national laws were in violation of the provisions of the International Covanant on Civil and Political Rights. The Covenant had been ratified by Argentina in August 1986 and had entered into force in November of that year. In accordance with customary international law, the Covenant applied to events occurring on or after the date of its entry into force.

(Mrs. Regazzoli, Argentina)

Consequently, the provisions of the Covenant did not apply to Acts 23.492 and 23.049, which covered actions occurring prior to the entry into force of any human rights conventions in Argentina. In addition, in its judgement of 3 July 1987, the Supreme Court of Justice had declared Act 23.521 to be constitutional.

18. In response to the question whether the Laws of Due Obedience and "Punto Final" represented a pardon or an amnesty, she noted that Argentina had not opted for amnesty. On the contrary, there had been investigations, trials and the handing down of sentences. In that context, the Government had promulgated an act which had placed limitations on criminal prosecution of individuals who had committed crimes on orders of their superiors. Nevertheless, that act did not imply the denial of the facts or of the criminality of the acts and the guilt of those who had committed them. Under the Constitution, it was up to the Congress to declare amnesty. Pursuant to the provisions of the Code of Criminal Procedure, amnesty blocked any further criminal proceedings and implied that any sentences that had been pronounced were nullified and their effects voided. With respect to the prerogative of pardon, it was false to reason that a presidential pardon represented an obstruction of justice for the victims of repression and their families. The prerogative of pardon, or clemency, which existed under most constitutional systems, could be defined as the power to nullify or reduce a sentence. Use of that prerogative did not eliminate the crime itself - it meant only that the sentence was not carried out. Clemency could be a means of achieving peace and social order. In fact, the decision to exercise clemency in Argentina had been based on the fact that the events of the past two decades had constantly jeopardized social order. The purpose of that presidential decree had been widely misunderstood; it had been made in order to bring peace to all sectors of Argentinian society.

19. Misunderstanding had also clouded interpretation of the fact that pardoned individuals were no longer subject to criminal proceedings alleging obstruction of justice. Nothing in Argentina's legislation prevented the continuing investigation of the facts. Indeed, those investigations were being pursued in the courts. The reasoning which held that the inability to bring an individual to trial hindered the elucidation of the facts of a case was based solely on the idea that a confession would be made by the guilty party. Yet, in more than four years of trials, not a single confession had been obtained, since Argentinian law guaranteed the right of the individual not to testify against himself. It must also be borne in mind that identification of the actual perpetrators of the acts had been virtually impossible due to the clandestine nature of the operations. Instead, the Government had chosen to place the burden of responsibility on those who had been in positions of power.

20. The remedy of extraordinary appeal had traditionally been used for federal issues involving the primacy of the Federal Constitution over other legal provisions and over provincial constitutions. The remedy later began to be expressed in jurisprudential form through the Supreme Court of Justice, which utilized the extraordinary appeal remedy to review decisions of lower courts and special cases of arbitrary sentences. Unlike the European system, the Argentinian

(Mrs. Regazzoli, Argentina)

system did not have a specialized court for constitutional review. That function was performed by the Supreme Court of Justice through the extraordinary appeal remedy. By virtue of article 100 of the Constitution, the Supreme Court of Justice was the final authority in interpreting the Constiution.

21. Like the United States, Argentina had a system of division of powers. All executive and legislative acts, with the exception of acts which were merely discretionary or ministerial, were subject to constitutional review by the Supreme Court of Justice, if and when there was a complaint by a litigant to that effect.

22. According to article 23 of the Constitution, a stage of siege could be declared in the event of internal disorder or foreign attack endangering the operation of the Constitution and of the authorities created thereby. During a state of siege, the power of the President of the Republic was limited to arresting or transferring individuals; he was not authorized to punish or convict individuals. In the event of foreign attack, the President had the power with the consent of the Senate to declare a state of siege for a limited period in one or more regions of the nation. In the event of internal disorder, he had that power only when the Congress was in recess. A state of siege was declared for a limited period, although the exact duration of that period did not have to be specified. During a state of siege, the rights provided for under article 4 of the International Covenant continued to be in force. Similarly, the existence of a state of siege did not imply the suspension of the Constitution or any weakening of the division of powers among the executive, legislative and judicial branches.

23. In considering the concept of the state of siege, it was clear that major evils required major remedies. Implicit in the concept was the idea that the situation would return to normal as soon as the emergency ceased. The declaration of a state of siege was therefore not an evil in itself. The danger was that the use of emergency powers would become standard, thus eroding those powers and creating a need for even stronger exceptional measures. Obviously, a "golden mean" of constitutional theory had to be applied: wider powers must be circumscribed by better controls.

24. Traditionally, matters relating to a state of siege because they were eminently political in nature were regarded as coming within the scope of the executive branch and exempt from judicial control. Nevertheless, the jurisprudence of the Supreme Court of Justice, with the support of constitutional scholars, had been introducing vital changes in that respect.

25. Although judicial control over specific measures applied under a state of siege had existed since 1959, the act of declaring a state of siege had not been subject to review by a court. By decision taken in 1978, the Supreme Court determined that, although such measures as the arrest and transfer of persons during a state of siege were provided for under the Constitution, that did not exempt officials from possible criminal liability when the taking of such measures constituted an offence under law. Under Act 23.098 of 1984 the legality of the declaration of a state of siege could be reviewed as part of the procedure of

(Mrs. Regazzoli, Argentina)

habeas corpus. Accordingly, progress was gradually being made towards guaranteeing the effective protection of human rights through judicial control even during a state of siege. It was hoped that that legal framework would be further expanded in the near future by the enactment of a law regulating the exercise of the powers of the executive branch with respect to the imposition of a state of siege. In that way, what had been a matter of discretion would become a power subject to regulation.

26. The attack on the La Tablada military barracks, situated on the edge of Buenos Aires, had occurred on 23 January 1989. Those who had taken part in the attack had surrendered on 24 January 1989. Twenty persons had been brought to trial. On 17 April 1989, the case had been remitted to the public prosecutor in the San Martin Federal Chamber. A public trial had been held between 20 July and 5 October 1989 and media and human rights groups had had access to the proceedings. The court decision had been handed down on 5 October 1989 and made public on 10 October 1989. Thirty experts and approximately 20 forensic doctors had testified during the trial. On 26 October 1989, both the Office of the Public Prosecutor and the defence attorneys had lodged special appeals against the decision by the Chamber.

27. Parallel judicial investigations had been conducted because of questions that had not been resolved during the indictment stage and in response to complaints lodged by the persons arrested, members of their families and the defence attorneys. The complaints alleged mistreatment or unlawful use of force by the police and were all currently under investigation.

28. Act 23.049 had amended the Code of Military Justice and had established a transitional régime for judging offences committed during the period of repression. The jurisdiction of military courts had been reduced to legal proceedings involving military offences. Civilians could no longer be brought to trial before military courts for ordinary offences. There was a recourse of mandatory appeal to the competent Federal Appeal Chamber against decisions handed down by military courts concerning military offences in time of peace.

29. Act 23.521 limited criminal prosecution of persons who had committed offences on orders of their superiors in accordance with a legal principle in force at the time the acts had been committed. The law was not contrary to the Covenant because it pertained to acts carried out before Argentina had become a party to the Covenant. Article 2 (3) (a) and (b) of the Covenant applied to acts occurring after the entry into force of the Covenant in Argentina, namely 7 November 1986.

30. Since the restoration of democracy, successive constitutional Governments had provided the Working Group on Enforced or Involuntary Disappearances with information concerning reported cases of forced disappearance. The National Commission on the Disappearance of Persons (CONADEP) and the Public Prosecutor's Office investigated those cases brought before the competent Federal Appeal Chamber. The Attorney-General had appointed three members of that office to investigate cases involving the disappearance of minors. Information was gradually

(Mrs. Regazzoli, Argentina)

being gathered and processed and her Government would be able to provide data on a large number of cases in the near future.

31. The Genetic Data Bank, which had been established under President Alfonsin, carefully collected and stored genetic data on family members of disappeared persons. Through the Bank, the patient work of family members and assistance provided by the Under-Secretariat of Human Rights in the Ministry for Foreign Affairs and Religion, it had been possible to return many children to their natural families.

32. In response to a request for information on measures to combat racism and racial discrimination, she said that the National Constitution of 1853, in its article 16, expressly enshrined the principle of equality; moreover, throughout the sections containing statements of principle, reference was made to the civil, economic, social and cultural rights of all inhabitants of the country. It was therefore clear that discrimination of any kind was essentially incompatible with the provisions of the Constitution. Moreover, Argentina had already incorporated into its legal system the following international treaties: the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention against Discrimination in Education, the International Convention on the Elimination of All Forms of Racial Discrimination, the American Convention on Human Rights, the International Convention on the Suppression of the Crime of Apartheid, and the International Covenants on Human Rights.

33. With respect to its domestic law, the Criminal Code provided for imprisonment, even for life, for homicide committed out of racial or religious hatred. That motive also constituted an extenuating circumstance in cases of crimes involving physical injury or harm to health, weapons abuse, unlawful deprivation of liberty and abuse, unlawful arrest or deprivation of liberty committed by a public official. The law regulating the activities of political parties prohibited the use of any party name containing words that expressed racial, class or religious hostility or that might provoke such hostility.

34. Turning to the questions that had been raised regarding freedom of religion, she said that Argentina had a long-standing tradition of religious freedom, going back to the peace treaty with Great Britain of 1825, which predated the Constitution of 1853. Great importance had always been attached to the principle that immigrants from other countries should be allowed to continue to practise their own religion.

35. Relations between the Government and the Catholic Church were regulated by the 1966 agreement between the Argentine Republic and the Holy See. Article 2 of the Constitution stated that the Federal Government supported the Roman Catholic Apostolic faith. That meant that the Government not only provided financial support, but also attributed a special value to the Church, which represented the majority of the population. Hence, the Catholic Church enjoyed pre-eminence, but it was not a State church. There was freedom of worship, but not equality of worship. The Catholic Church enjoyed the legal status of a public body corporate,

(Mrs. Regazzoli, Argentina)

while other religious denominations were allowed to function as associations, with or without legal status as bodies corporate. Nevertheless, discussions were being held with representatives of the main religious groups in the country with a view to granting a special legal status to non-Catholic religions.

36. Under Act No. 21.745, all non-Catholic religious institutions and organizations were required to register with the national registry of religions; once registered, however, they were allowed to carry out their activities anywhere in the country. While some groups argued that the registration law was unreasonable, because it required State authorization for the religious groups to operate, other groups considered it to be too lenient because it had allowed for a proliferation of cults, especially since the requirements for registration were very simple. A proposal had been made to establish parliamentary commissions to study the question of cults and the need to control them. The question of how many different religions were practised in Argentina was difficult to answer, because the registry of religions was actually a list of organizations, not of religions as such. So far, approximately 2,730 religious groups had registered. Although the law was defective, no conflict had yet arisen in its application. Registration itself was a simple procedure, and once a group was registered, it could request tax exemptions which were available to any duly registered institution. There was no discrimination on religious grounds and hence, no violation of article 26 of the Covenant.

37. Under article 76 of the Constitution, a person must belong the Roman Catholic Apostolic Church in order to be elected President or Vice President of the Nation. However, that was the only office governed by that restriction, and it could be met merely by being baptized in the Catholic Church, without regard for what the person actually believed. As far as the provinces were concerned, Catamarca was the only one which also required that its governor be a Roman Catholic. Aside from those particular instances, there was no religious requirement for the holding of any other high office, and indeed, persons of many different faiths had held office in Argentina.

38. The question had been asked whether there was a proposal to amend the Constitution. The Council on the Consolidation of Democracy (Consejo de Consolidación de la Democracia) had pronounced itself in favour of eliminating the aforementioned religious requirement, and many other persons who had been concerned with the matter agreed with that opinion, as did the Commission on Justice and Peace (Comisión de Justicia y Paz), which belonged to the Catholic Church. The Constitution also provided that members of Catholic religious orders could not be elected to Congress. If the Constitution was amended, all those questions would surely be analysed. Nevertheless, it was worth pointing out that so far there had been no declaration of the necessity of amendment, as required under article 30 of the Constitution. It could not be said categorically that the requirement to belong to a given religion in order to be Head of State was contrary to the Covenant, particularly in view of the fact that there were many other countries which had an official or State religion, as well as others in which belonging to a given religion or not belonging to any religion at all was, either implicitly or explicitly, a requirement for holding public office.

(Mrs. Regazzoli, Argentina)

39. Commenting on the status of Jehovah's Witnesses, she pointed out that exemptions from military service to members of that denomination were granted on a case-by-case basis to seminary students who presented the necessary certificates from the Jehovah's Witness institution concerned. The Jehovah's Witness Association had been proscribed by a decree issued by the military régime in 1977; that measure, however, had been rescinded on 8 March 1984, and the association was currently registered on the national registry of religions. Jehovah's Witnesses enjoyed complete freedom of worship. On the other hand, the registration of Children of God had been cancelled because they had been engaged in activities that were contrary to public order and morality. The group had not appealed the cancellation nor had it requested reinstatement. In 1989, police and judicial investigations had revealed the existence of clandestine activity by groups linked to the cult. Criminal proceedings had been initiated against their members because they were suspected of having committed common crimes, not because of religious reasons.

40. On the question of subsidies to religious organizations, she explained that, under article 2 of the Constitution, the Federal Government provided economic support to the Roman Catholic Church in the form of aid for training of the clergy and for support of bishops. The amount of that support did not represent a significant percentage of the national budget. Tax and customs exemptions were granted on an equal basis to religious schools of all denominations.

41. On the issue of conscientious objectors, she informed the Committee that as yet the Argentine Republic had no legislation in that area, but a bill providing for regulations concerning conscientious objectors had been submitted to the Congress. On 18 April 1989, the Supreme Court had handed down a sentence in the case of a Catholic man who had requested recognition as a conscientious objector; the Court had recognized the principle that the obligation of military service could be met without taking up arms, which could be justified on grounds of freedom of religion and conscience.

42. Turning to the question of pensions granted by Congress to the children or other relatives of disappeared persons, she said that she had brought with her, and would make available to the Committee, full reports on three significant cases of persons who had been detained by the military régime and had subsequently claimed compensation for illegal detention. One of those cases was that of the current President of Argentina, Carlos Saúl Menem, who after five years of imprisonment, had, upon obtaining his freedom, initiated litigation against the State and had been awarded compensation. The cases in question showed that despite the Law of Due Obedience and the Law of "Punto Final", and even despite the granting of pardons in some cases, it was possible to continue litigation until compensation was awarded.

43. She would also make available to the Committee detailed information on the legislation regarding indigenous populations, which showed that they were free to preserve their traditions and communities, and that lands were being returned to them.

(Mrs. Regazzoli, Argentina)

44. In response to questions on freedom of expression, she said it was worth pointing out that Argentina still followed the practice of written proceedings in trials which provided for a limited period of secrecy. So far the bill proposing amendment of the law aimed at institutionalizing verbal and public proceedings in the national courts mentioned in paragraph 152 of the Argentine report (CCPR/C/45/Add.2) had not been adopted. However, the Argentine practice was not in conflict with the intention and substance of article 14 of the Covenant, since persons under trial enjoyed full guarantees. As in the cases of the oral trials of the commanders and of the persons involved in the La Tablada incident, journalists had direct access to courtrooms and to the persons under trial when they were not incommunicado, to the judges and to the attorneys. There were no obstacles to coverage by the media.

45. The CHAIRMAN invited members to make their general observations on the replies presented by the representative of Argentina.

46. Mr. PRADO VALLEJO expressed his appreciation for the openness and co-operative spirit shown by the representative of Argentina. Her replies had been most illuminating. He noted with satisfaction the fact that investigation of events could be continued over the years. That would open the way to help clarify past violations of human rights. It was encouraging that even though a new trial could not be initiated, the events could be clarified. The representative of Argentina had explained that no new trial could be brought because the perpetrators of violations could not be identified, since they had acted clandestinely. He also understood that certain measures had been necessary because of political considerations aimed at achieving social peace. He understood that the measures were legal and constitutional, and did not constitute violations of the Covenant, since they had been adopted before the Covenant had entered into force for Argentina. However, he also hoped that the representative of Argentina, as well as other members of the Committee, would understand his position. What concerned him most of all was the moral aspect, in other words, the fact that the measures taken had moral consequences, as they not only affected human rights, but also set precedents. Considering that many Latin American countries, including his own, had at different points in their history had the experience of suffering military dictatorships, the precedents set by the measures taken in Argentina could have negative consequences.

47. On the question of the privileges enjoyed by the Catholic Church, he merely wished to express his hope that when the Constitution was amended, the principles of non-discrimination and non-preference with regard to religions would be included.

48. He noted with satisfaction that investigations were being pursued with regard to the La Tablada cases, and trusted that all guilty persons would be duly punished. Finally, he wished once more to express his great satisfaction with the transition to yet another democratic Government in Argentina.

49. Mr. EL-SHAFEI said he disagreed with the representative of Argentina on one point. In his view, the Covenant was applicable to cases which arose as a consequence of laws which predated ratification. As long as negative effects persisted - and those were recognized by all, including the Argentine authorities - article 2 of the Covenant was applicable. If the Committee were to receive a complaint under that article, what would be the response of the Government of Argentina? He felt that most members of the Committee would agree that the Argentine authorities must continue to pay compensation and impose sentences in the cases in which rights had been violated. In his view, the Government's responsibility continued as long as the negative consequences continued.

50. Mr. POCAR said that the replies given by the representative of Argentina confirmed the impression he had had, on reading the report of Argentina, that the Government of that country was seriously committed to the protection of human rights which had been violated during the military dictatorship. He understood the reasons for the enactment of the Law of Due Obedience and the Law of "Punto Final", and could even agree with them if they were necessary for national reconciliation. What he did wish to emphasize was that those measures should not jeopardize the right of victims to reparation. Even if reparation was symbolic, it represented an acknowledgement that injury had been inflicted, even if the perpetrators could not be identified and punished.

51. He would appreciate further information on the application of article 9 (5) of the Covenant, which had entered into effect before the enactment of the Law of "Punto Final". Article 9 (5) of the Covenant had to do with the right to compensation, which did not necessarily arise from violations of the Covenant itself, but rather from violations of the domestic law of Argentina. He would also like further clarification as to how Argentina applied international customary law. The Constitution was silent on that matter, and the report mentioned a reservation with regard to article 15 (2) of the Covenant (CCPR/C/45/Add.2, para. 176). In his view, that reservation posed certain problems.

52. Mr. FODOR said that, even though considerable progress had been made in implementing the Covenant in Argentina, there were still areas where further improvement was necessary. Although the constitutional Governments had made considerable efforts to protect human rights, the use of excessive force by the police and the involvement of the armed forces in internal affairs during the state of emergency were still cause for concern. The enactment of the Law of "Punto Final" and the Law of Due Obedience together with the failure to investigate almost 9,000 disappearances demonstrated the lingering effects of the period of military rule. Although the disappearances had occurred before Argentina had become a party to the Covenant, a proper investigation must be conducted. Furthermore, the legal presumption under the Civil Code that persons who had been absent from their place of residence and from whom there had been no news for six years were considered legally dead did not release the State party from its obligations under the Covenant. He hoped that the Argentine Government would make further efforts to establish the whereabouts of the disappeared persons in order to strengthen its democratic institutions and the rule of law.

53. Mr. COORAY inquired whether the status of the Covenant was below that of the Constitution in Argentina. In that regard, he pointed out that under article 2 (2) of the Covenant States parties had the obligation to give effect to the rights recognized in the Covenant.

The meeting rose at 1.15 p.m.